

EQUITY BANK RWANDA Plc v DUSABE SANGANO

[Rwanda COURT OF APPEAL – RCOMAA 00057/2022/CA (Kamere, PJ.) September 09, 2022]

Commercial law – Loan contract – Bank employees – Unfair dismissal – The rate for the calculation of the interest for the dismissed employee – If a bank unfairly dismisses an employee with a loan granted at the rate set for salaried employees, that rate remains used for him/her to repay the loan.

Commercial law – Unfair bank deductions – Accrued interests – Principles for calculating interest – Interest rate – Recovery of loan and interests thereof – If a bank unfairly deducts money from a person's account because it was acting as a commercial bank, it must return the money with accrued interests calculated at the rate at which it proved that it was conducting financial transactions by the time it deducted the money.

Facts: Equity Bank established modalities to facilitate its employees to get loans at an interest rate (8%) which is lower than 18.25% at which the bank grants loans to ordinary customers, and in this framework, Sangano, as an employee of the Bank, was granted a loan calculated at that interest rate. Later, the Bank decreased the interest rate on the loans granted to its employees from 8% to 6%, and consequently, the loan it had granted to Sangano was fixed at that rate per year.

Afterwards, Sangano was dismissed from his job and the Bank immediately started to calculate the loan offered to him at the interest rate of 18.25% to which the Bank normally grants the loans to its ordinary customers. Being not satisfied with the decision dismissing him from his job and the immediate increase of the interest rate on the loan, he filed two claims, a claim relating to the loan filed in the Commercial Court, requesting that Equity Bank must indicate the bank statement of the debt's status and decrease the loan interest rate to be reset at 6%, and to order to the Bank to reimburse to him the balance of all money he paid at the interest rate of 18.25%, plus the interests thereof; the Court declared that his claim is unfounded, and he appealed against that decision to the Commercial High Court which declared that the loan should remain at the interest rate of 6%; and he filed the second claim about the labour issues to the competent court claiming that he was illegally dismissed, whereby the Court declared that he was unfairly dismissed.

EQUITY BANK RWANDA Plc appealed to the Court of Appeal submitting that the Commercial High Court misinterpreted the loan agreement concluded with the claimant by ruling that any act of Sangano that will lead to his dismissal shall be considered as trigger for the modification of the interest rate; due to the fact that Equity Bank Rwanda Plc unfairly dismissed him, the interest rate must remain at 6% while in the loan agreement both parties entered into, there is no provision on the modalities in which the employee will leave the employment so that the interest rate is changed; rather, in case the employment contract termination is due to any reason, such fact shall lead to the modification of the interest rate.

The claimant submitted that the issue in the instant case is to clearly understand the context in which the loan agreement was concluded, he was working in another bank, the appellant headhunted him as he was a skilled employee needed by the Bank; later, he was dismissed, and because the Bank cannot prove that he poorly performed his job, it is evident that he was illegally fired, at the first instance in the Commercial Court he lost the case because he failed to prove that

he was unfairly dismissed because the labor case had not yet been decided, but by the time the case was in the Commercial High Court, the available evidence in the labor case indicated that he was unfairly dismissed.

Held: 1. If a bank unfairly dismisses an employee with a loan granted at the rate set for salaried employees, that rate remains applicable to him/her for repaying the loan; therefore, due to the fact that the respondent was illegally dismissed as held in the labour case, the interest rate must remain at 6%.

2. If a bank unfairly deducts money from a person's account because it was acting as a commercial bank, it must reimburse the money with accrued interests calculated at the rate at which it proved that it was carrying out financial transactions by the time of the money deduction, regardless of the fact that the victim was not engaged in the business; therefore, the fact that the respondent suffered the unfair deduction of his money calculated at the interest rate of 18.25%, for a period of 22 months and such Bank has never saved it, instead it used it in financial transactions as a commercial Bank, such deducted amount has to be refunded to the respondent with accrued interests calculated at the rate of 18.25% at which it used to carry out financial transactions.

3. On the issue that has not yet been resolved under Rwandan legislation, the Court resorts to doctrines as well as international laws.

4. In the case of contract of adhesion, the interpretation is done independently to the drafter.

**The lodged appeal lacks merits.
The cross-appeal has merits.**

Statutes and statutory instruments referred to:

Law N°22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, articles 111 and 154;

Law N°45/2011 of 25/11/2011 governing contracts, articles 65 and 137.

Judgment

I. BACKGROUND OF THE CASE

[1] On 04/01/2016, DUSABE SANGANO Javan entered into an employment contract with EQUITY BANK RWANDA PLC, but before being recruited by EQUITY BANK, he was employed by KCB Bank which had granted to him a loan that he paid at an interest rate of 7% per year, the rate that was only accorded to KCB staff members. DUSABE SANGANO states that among factors that convinced him to accept the offer of EQUITY BANK includes a promise that his loan in KCB Bank would be transferred to EQUITY BANK at the interest rate set for its employees.

[2] On 28/02/2018, Equity Bank Rwanda Plc entered into a loan agreement of 146,536,603 Frw with DUSABE SANGANO Javan, and the main part of the loan was used to complete the repayment of the loan from KCB Bank mentioned above and that loan was to be paid at an interest rate of 8% per annum because he was then the employee of Equity Bank. Article 4 of the agreement provided that in the event that SANGANO decides to leave the employment from Equity Bank, the interest will be

charged at the prevailing commercial rate without further notice. Furthermore, paragraph 5 of article 6, of the Credit Regulations provides that the Loan is to be repaid within agreed period and if there is a change of the Employer, there will be a facility to assume commercial rate of interest.

[3] On 11/09/2019, the Management of Equity Bank decided to change the interest rate on the loans granted to its employees from 8% to 6%, meaning that the disputed loan that was given to SANGANO Javan was removed from the interest rate of 8% to 6% per annum.

[4] On 30/4/2020, Equity Bank Rwanda Plc dismissed DUSABE SANGANO Javan, and based on article 4 and paragraph 5 of article 6 of the aforementioned loan agreement, for SANGANO, who was no longer an employee of Equity Bank though he claimed to be unfairly dismissed, the interest rate on his outstanding loan immediately started to be computed at 18.25% per year.

[5] SANGANO who was not satisfied with the decision of dismissing him and immediately raising the interest rate on his loan, filed a claim related to the loan in the Commercial Court, requesting that Equity Bank must indicate the bank statement of the status of the debt and decrease the interest rate to be reset at 6%; he also filed a labour claim in another competent court stating that he was unfairly dismissed.

[6] On 31/03/2021, the Commercial Court rendered the case about the loan, and declared DUSABE SANGANO Javan's claim unfounded, and ordered to him to continue paying the loan at the rate of 18.25%.

[7] Dissatisfied with the above mentioned ruling, DUSABE SANGANO Javan appealed to the Commercial High Court, stating that the Commercial Court misinterpreted the article 4 of the loan agreement he entered into with Equity Bank, because the termination of the employment contract resulted from his unfair dismissal.

[8] In paragraph 16 of the judgment RCOMA 00349/2021/HCC, the Commercial High Court explained that article 4 of the loan agreement provides that in case DUSABE SANGANO Javan is the one who causes the termination of the employment contract, the interest rate on his loan will increase thereof, but in instances where it is Equity Bank which causes such termination, he will continue repaying on the interest rate of 6% specified in the agreement. The Commercial High Court held that, basing on that interpretation and the labour case RSOCA 00103/2021/HC/KIG which had already ruled that EQUITY BANK illegally dismissed DUSABE, EQUITY BANK did not have the right to change the interest rate on the set loan, which means that the loan would have remained at the interest rate of 6%.

[9] On 08/04/2022, EQUITY BANK RWANDA Plc appealed to the Court of Appeal, the appeal was docketed under RCOMAA 00057/2022/CA, stating that the Commercial High Court misinterpreted article 4 and paragraph 5 of article 6 of the loan agreement because the Court added the conditions that were not provided under the agreement.

[10] DUSABE SANGANO Javan states that he agrees with the decision taken by the Commercial High Court but he is not satisfied with the fact that the Court did not order to EQUITY BANK RWANDA Plc to pay to him 18,449,618 Frw exceeding to the amount he should have paid at 6%, plus the interest of 18.25% per annum, meaning the amount of 5,297,063 Frw which continues to increase

until the case is decided. Therefore, DUSABE Javan SANGANO has filed a cross-appeal seeking for refund.

[11] The debates within the case are resulting from the loan agreement between EQUITY BANK RWANDA Plc and DUSABE SANGANO Javan, whereby both parties disagree on the contents of article 4 and paragraph 5 of article 6 of the agreement dated 22/02 /2018, where Equity Bank Rwanda Plc finds that the previous Courts misinterpreted those provisions hence leading them to make an unfair decision thereof, while DUSABE SANGANO Javan submitted that the previous Courts clearly motivated those provisions, except that they did not order the return of 18,449,618 Frw deducted after Equity Bank Rwanda Plc changes the interest rate, which is the reason for his cross-appeal against Equity Bank Rwanda Plc.

[12] The hearing of the case was scheduled on 06/07/2022, EQUITY BANK RWANDA Plc was represented by Counsel KAREMERA Frank, while DUSABE SANGANO Javan was assisted by Counsel TUYISHIME Jean Pierre. The pronouncement of the judgment was scheduled on 29/07/2022, but was adjourned to 09/09/2022 after the judicial recess.

II. ANALYSIS OF LEGAL ISSUES

- **Whether the Commercial High Court properly interpreted the article 4 and the article 6, paragraph 5 of the loan agreement dated 28/02/2018**

[13] Counsel KAREMERA Frank representing EQUITY BANK RWANDA Plc states that the previous courts have differently interpreted the statement of the loan agreement, providing that: "...Should you leave the employment of EQUITY BANK RWANDA Ltd, the interest will be charged at the prevailing commercial rate without prior notice to the borrower", where the Commercial Court interpreted articles 4 and 6 of the agreement stating that once DUSABE Javan SANGANO will no longer be the employee of EQUITY BANK RWANDA Plc, the interest rate on his loan will start to be charged at the prevailing commercial rate, and the Commercial High Court, in paragraph 17 of the appealed judgment RCOMA 00349/2021/HCC, held that the word "leave" has the same meaning with "abandon", "desert" and "quit", mentioned in the contract, meaning that the act of DUSABE Javan SANGANO which leads to his dismissal, will be considered as a trigger to change the interest rate; due to the fact that EQUITY BANK RWANDA Plc unfairly dismissed him, the interest rate must continue to be calculated at 6%. He submits that the Court misinterpreted this article because, in the explanations it provided, it added the elements not contained in the agreement, as indicated in the paragraph 16 of the appealed judgment, where it held that "should you leave" is an act that will be caused by SANGANO Javan DUSABE; in paragraph 21, it ruled that the reason why the borrower is no longer considered as employee of EQUITY BANK RWANDA Plc should be taken into account, in the event that the reason is due to the Bank, the interest will continue to be calculated at the rate applied when he was still an employee of the Bank.

[14] He also avers that in the loan agreement between the two parties, there is no provision on the modalities in which the employee will leave the employment so that the interest rate is changed, rather, in case the employment contract termination is due to any reason, the interest rate shall be changed; therefore, the Commercial High Court disregarded the fact that DUSABE Javan SANGANO was offered a loan at a low interest rate as an advantage reserved for Bank employees;

by interpreting the article 4 and the article 6, paragraph 5, it should refer to the article 66 of the Law n° 45/2011 of 25/11/2011 governing contracts which reads that " *Interprete a contract or a clause thereof is to give the meaning of the purpose and promise under the contract.*"

[15] The Legal Counsel for EQUITY BANK also states that the Commercial High Court should have taken into account Article 68 of the above-mentioned Law, which provides that " Language and other conduct relating to a contrat shall be interpreted in the light of circumstances, and if the principal purpose of the parties is ascertainable, it shall be given substantial value", this means that in case DUSABE Javan SANGANO was no longer the employee of EQUITY BANK RWANDA Plc, he would no longer be entitled to the advantages granted to its employees, the reason why the loan agreement did not provide for the modalities in which the loan of the employee whose the contract with Equity Bank Rwanda is terminated should be charged at the prevailing commercial rate.

[16] He further adds that the previous Court disregarded that in the case RSOCA 00103/2021/HC/KIG, DUSABE Javan SANGANO sued EQUITY BANK RWANDA Plc for the unfair dismissal and he was awarded 29,000,000 Frw as moral damages ; this means that by leaving the work, he missed many advantages on which the Court based in awarding him those damages, including an increase of the interest rate on the loan he owes to the Bank. Therefore, he requests to the Court to re-examine article 4 and paragraph 5 of article 6 of the loan agreement dated 22/02/2018, and it shall note that in paragraph 5 of article 6 relating to the condition of sanction, it is provided that in case the employer is no longer Equity Bank Plc, the loan will continue to be repaid according to the interest rate offered by the commercial banks, thus it shall rule that DUSABE Javan SANGANO must continue paying the loan at the interest rate of 18.25% per annum.

[17] DUSABE Javan SANGANO and his Counsel TUYISHIME Jean Pierre pleading on this ground of appeal state that in the appealed judgment, the Commercial High Court correctly interpreted article 4 of the loan agreement, that the statements of EQUITY BANK RWANDA Plc that it interpreted that article regardless of the provisions of articles 66 and 68 of Law n° 45/2011 of 25/11/2011 governing contracts, are unfounded, because in paragraphs 21 and 22 of the judgment RCOMA 00349/2021/HCC the Court analyzed the provisions of article 66, where it explained the rationale of the mentioned clauses of the agreement, where it held that the reason related to the fact that DUSABE Javan SANGANO was no longer an employee of the Bank should have been taken into account, and that article 68 has been taken into account in explaining the purpose of the contract as indicated in the paragraph 16 of the appealed judgment, where it explained that the purpose of the contract was that if DUSABE Javan SANGANO resigned from the job, the interest rate would increase, this means that in case he stays at work or is unintentionally fired, EQUITY BANK RWANDA Plc has no right to increase an interest rate.

[18] They further add that EQUITY BANK RWANDA Plc headhunted DUSABE Javan SANGANO from KCB by promising him to redeem his loan without increasing the interest rate, and by extending the loan repayment period, where both parties agreed that it will be repaid in a period of 180 months.

[19] DUSABE Javan SANGANO states that the issue in the case is not English, rather it is about well understanding the context in which the loan agreement was concluded, it is not the first time he works in the Bank, he worked in KCB Bank, and EQUITY BANK headhunted him because he was the skilled employee it needed, it paid him a good salary, and it redeemed his loan owed to

KCB, but because it never proved that he did not perform well his job, it illegally dismissed him. He adds that at the first instance in the Commercial Court he lost the case because he had no evidence proving that he was unfairly dismissed as the labour case had not yet been decided, but by the time the case was in the Commercial High Court, the available evidence in the labor case indicated that he was unfairly dismissed.

[20] DUSABE SANGANO Javan also states that when EQUITY BANK dismissed him, it immediately changed the interest rate from 6% to 18.25%, until the Commercial High Court ruled that the Bank should not increase the interest rate, it had already deducted from his account the amount of money exceeding the amount that should have been deducted up to 18,449,618 Frw, in the present appeal he claims to be refunded such amount because in the appealed judgment he had claimed for it but the Court did not decide about it, in addition to the interest rate of 18.25% that he would have received if the Bank did not deduct such amount.

DETERMINATION OF THE COURT

[21] Article 64 of the Law n^o 45/2011 of 25/11/2011 governing contracts provides that : " 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".

[22] Article 70 of the abovementioned Law provides that : "Each party shall have obligation to perform the contract in good faith and fair dealing between parties".

[23] The case file contains the loan agreement drawn up by EQUITY BANK Plc (Contract of adhesion) and DUSABE SANGANO Javan had to adhere to it, the loan was amounting to 146,535,630 Frw calculated from 15/02/2018 until 28/02/2033, and the interest rate of 8% was decreased to 6% by the decision of the Bank's management. The loan agreement contains a statement on which the parties disagree : "*Should you leave the employment of EQUITY BANK RWANDA Ltd, the interest will be charged at the prevailing commercial rate without prior notice to the borrower*", each party conveniently interprets it and the Court must interpret it to settle the dispute between them. This instant Court also finds that in interpreting such statement, it should not disregard that the loan agreement between the two parties would not have been drawn up in the way it was if it had not been preceded by another employment contract between the parties.

[24] The Court of Appeal finds that, in analyzing the statement "Should you leave the employment of EQUITY BANK RWANDA Ltd" which caused a dispute between the parties, it shall apply two rules, exclusive search of common intention of contracting parties¹ and absolute prohibition on distorting the meaning or scope of clear and precise stipulations. The Court relies on doctrines and international laws on this issue that has not been set by Rwandan laws².

[25] The Court of Appeal finds that, in analyzing the statement "Should you leave the employment of EQUITY BANK RWANDA Ltd", it should take into account the interpretation in

¹ <https://aurelienbamde.com/2017/07/10/linterpretation-du-contrat-et-le-juge;>

² Aurélien Bambé, *Droit des contrats, Droit des obligations, Effets du contrat, Force obligatoire, Posted Jul 10, 2017, et le Code Civil français*, acceded on 21/07/2022.

consideration of the usefulness of the clause ³ and the interpretation in consideration of a party's quality ⁴; in the case of a contract of adhesion, the interpretation is done independently of the drafter⁵.

[26] The Court of Appeal finds that, basing on the aforementioned articles, as well as the explanations that have already been provided, the statement "*Should you leave the employment of EQUITY BANK RWANDA Ltd*", appearing in the loan agreement between EQUITY BANK and DUSABE SANGANO does not itself immediately indicate the modalities in which SANGANO should have left the job from EQUITY BANK, whether it was voluntary or involuntary leaving. However, the Court finds that, if it relates that statement to the existing context of recruiting SANGANO DUSABE Javan from KCB Bank to EQUITY Bank, and who was immediately granted a loan for a long term equal to 180 months, it is an indication that the effects of the loss of employment that SANGANO should have suffered as an employee of EQUITY BANK should be examined in light of the attitude of the employee and the employer that led to such separation; this statement "*Should you leave the employment of EQUITY BANK RWANDA Ltd*", in this context, does not mean that the separation for any reason will cause the change of the interest rate, as submitted by EQUITY BANK; rather, as already held by the courts in the labour case that Equity Bank mistakenly dismissed SANGANO DUSABE, hence depriving him of the opportunity of complying with employment-related loan agreement which would last for 180 months, it was already evident that Equity Bank violated the provisions governing the contract mentioned above so that it should not be the one to benefit from this fact by being authorised to raise the interest rate on the loan and victimising DUSABE SANGANO Javan who managed to comply with the agreement by requiring him to pay excessive interests that would not be charged if EQUITY Bank had complied with the employment contract they concluded.

[27] Basing on the foregoing analysis, the Court of Appeal finds that the Commercial High Court did not err in explaining that the terms Leave, abandon, desert, quit, used in the contract mean that any act of Sangano that will lead to his dismissal shall be considered as trigger for the modification of the interest rate and in holding that EQUITY BANK RWANDA Plc illegally dismissed him as decided in the labour case which examined such issues, the interest rate should remain at 6%⁶, so the ground of appeal raised by EQUITY BANK on this issue lacks merits.

Whether EQUITY BANK RWANDA Plc should be ordered to repay to DUSABE SANGANO Javan the amount he paid in excess of what he would pay at the interest rate of 6% per annum, plus interest thereon calculated at the rate of 18.25% per annum

[28] DUSABE Javan SANGANO states that in the appealed judgment RCOMA 00349/2021/HCC he had requested to the Court to order to EQUITY BANK RWANDA Plc to refund to him the amount of 18,449,618 Frw in excess of what he would pay at 6%, plus interests calculated until the pronouncement of the judgment, but the Court did not award to him such

³ Aux termes de l'article 1191 du Code civil, « *lorsqu'une clause est susceptible de deux sens, celui qui lui confère un effet l'emporte sur celui qui ne lui en fait produire aucun.* »

⁴ Aux termes de l'article 1190 du Code civil « *dans le doute, le contrat de gré à gré s'interprète contre le créancier et en faveur du débiteur, et le contrat d'adhésion contre celui qui l'a proposé.* »

⁵ L'article 1190 du Code civil prévoit que, en cas de doute, le contrat d'adhésion s'interprète contre celui qui l'a proposé.

⁶ See paragraph 17 and 18 of the appealed case.

amount. He explains that from 28/6/2020 to 28/3/2022 when the Court ordered to EQUITY BANK RWANDA Plc not to raise the interest rate, DUSABE Javan SANGANO was charged 2,239,000 Frw per month for a period of 22 months due to the increase of such interest rate, meaning from 6% to 18.25%, while the loan agreement stipulated that he had to pay was 1,400,381 Frw per month, but there was an increase of 838,619 Frw per month, and this happened over a period of 22 months, and the extra amount charged illegally was totally amounting to 18,449,618 Frw.

[29] He requests that since EQUITY BANK RWANDA Plc illegally took the money, the Court should order it to refund it to him together with the interests calculated at the rate of 18.25% as it used to charge him, and those interests must be calculated until the judgment pronouncement. He bases his statements on article 137 of the Law n°45/2011 of 25/11/2011 governing contracts, which reads that : “The aggrieved party has right to damages from the party failing to perform his/her contractual obligations, unless the claim for damages has been suspended or withdrawn”.

[30] Pleading on this cross-appeal, Counsel for EQUITY BANK RWANDA Plc states that such appeal should not be admitted because the money claimed against both parties were not debated in the previous cases, it is a new claim filed at the appeal level, and this is contrary to the provisions of the article 154 of the Law n°22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure which reads that “ *No new claim may be lodged at the appeal level, unless it concerns compensation or if the new claim constitutes a defence to the principal action before the court of appeal*”;

[31] DUSABE SANGANO Javan and his Counsel state that such amount is not a new claim, it is rather considered as a result of the increase of the interest rate, it is clear that if the Court had ruled that they were not allowed to increase the interest rate, the increase was not appropriate, they would not have kept silent. They also add that the issue was raised in the Commercial High Court, it is included in their submissions and it was also reiterated in the hearing report, even though it was not analysed in the judgment, even after the case was appealed, his Counsel inquired the Bank about the money that he was charged on the increased rate and refunding modalities thereof, and he inquired if it will lodge appeal, and following the appeal filed by the Bank, they also raised that issue in the cross-appeal.

[32] On this issue, Counsel Frank KAREMERA, representing EQUITY BANK states that if the Court finds that he should be subsidiarily granted the interests on the interest rate of 18%, he should not be awarded such interest as he was not a money trader, and he requests to the Court to apply the law. As for the fact that there is an additional amount that SANGANO used to be charged, he replies that he cannot retort about it in the form of figures, so he has not yet proved to the Court if there is the money that DUSABE has really paid, if the alleged money is the same or different amount.

DETERMINATION OF THE COURT

[33] Article 154 of Law n°22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, provides the following : “ No new claim may be lodged at the appeal level, unless it concerns compensation or if the new claim constitutes a defence to the principal action before the court of appeal. However, parties may claim interests, rents and other accessories which were realized since the pronouncement of the judgement and moral damages for the loss suffered from the time the judgement was delivered.”

[34] Article 65 of Law n°45/2011 of 25/11/2011 governing contracts provides that: “A contract shall not only cover the subject matter but also the effects that equity, practices or law impute to the obligations according to the nature of the contract”.

[35] Article 137 of the above-mentioned law also provides the following : “The aggrieved party has right to damages from the party failing to perform his/her contractual obligations, unless the claim for damages has been suspended or withdrawn”.

[36] The Court of Appeal finds that the case file of the appealed judgment indicates that in the submissions of DUSABE SANGANO Javan he mentioned the issue of this money, stating that he has been charged at a rate of 18.25% and he claimed to be reimbursed⁷, and also in the hearing of 16/02/2021, SANGANO and his counsel have reiterated this matter requesting that EQUITY BANK must return to him the exceeding amount that was charged including interests and moral damages⁸, but the Court did not address the issue in its decision.

[37] Basing on the aforementioned legal provisions and on the explanations that it is not for the first time in the appeal that DUSABE SANGANO Javan claims for the disputed money, the Court finds that the claim for the reimbursement of the amount of the money exceeding the sum that DUSABE SANGANO Javan had to pay at 6%, and the interest rate of 18.25% is not new claim lodged at this level as alleged by EQUITY BANK; rather, it is the effect of the contract breach as stated by DUSABE SANGANO and the claim had already been filed just at the beginning of this case.

[38] The Court also finds that, as alleged by the claimant, he was deducted 1,400,381 Frw per month at the interest rate of 6%, when the interest rate was raised to 18.25%, he was deducted 2,239,000 Frw per month, with an increase of 838,619 Frw per month, for a period of 22 months, the excess money is amounting to 18,449,618 Frw unfairly deducted, the Bank did not capitalize such amount, it used it for financial transactions as commercial Bank, it must repay it with accrued interests calculated at a rate of 18.25%, irrespective of the fact that DUSABE SANGANO Javan was not a trader, as alleged by the lawyer for EQUITY; rather, on basis of the fact that this is the rate that Equity Bank indicated to him as the rate fixed for the Bank financial transactions by the time when the money was unfairly deducted, this rate is not much different from the average rate at which the commercial banks, including EQUITY BANK, offer the loans, as determined in the judgment decided by this instant Court⁹, they should be calculated for a period of 22 months during which the money was deducted, this means $838,619 \text{ Frw} \times 22 \text{ months} \times 18.25\% = 3.367.055 \text{ Frw}$.

⁷ Where he states: “We pray the Court to declare that EQUITY BANK illegally changed interest rate and to order to EQUITY BANK to repay Javan SANGANO the difference paid on interest rate of 18.25% plus the accrued interests. Normally Javan SANGANO was paying 1,400,381 Frw per month at an interest rate of 6%, however from 6/2020 to 12/2021 Javan SANGANO was paying 2,239,000 Frw per month at an interest rate of 18.25% which means that there is a difference of 838,619 Frw Javan SANGANO paid within 19 months, so the Bank should reimburse him 15,933,761 Frw and its interest calculated at the BNR rate as ordered by the Commercial High Court in RCOMA 00644/2018/HCC”

⁸ The Court states: “The Bank made a mistake on the loan and it should be responsible for its effects as it is the one that breached the contract, therefore it should be liable of its effects, and consider the decision taken, and they will refund the excess money and its interests as well as damages”.

⁹ In the judgment RCAA 00003-00004/2021/CA decided on 15/07/2022, paragraphs 50 & 53 where the Court held that:” *because the fact that he would be reimbursed the amount he paid plus the interest calculated at the rate of 18% is not to carry out financial transactions; rather, the person who paid the money has requested it from the bank, and that is the average rate at which the commercial banks offer loans*”.

▪ **Determination of the costs incurred in proceeding with the case as requested by the parties**

[39] The Counsel for EQUITY BANK RWANDA Plc requests to the Court to order to DUSABE Javan SANGANO to repay to EQUITY BANK RWANDA Plc 1,000,000 Frw for procedural fee and 4,000,000 Frw for counsel's fees paid since the beginning of the case up to this instance.

[40] Pleading on this issue of money requested by Equity Bank Rwanda Plc, DUSABE Javan SANGANO finds their request unfounded, because it illegally dismissed him as held in the judgment RSOCA 00103/2021/HC/KIG which has become final, and thus, it should be held liable for consequences thereof.

[41] DUSABE Javan SANGANO requests to the Court to order to EQUITY BANK RWANDA Plc to pay to him the damages of 2,000,000 Frw for unnecessary appointments to the Bank, 3,500,000 Frw for Counsel fee from the first instance up to the Court of Appeal, and 1,500,000 Frw for having dragged him into unnecessary lawsuits.

[42] The Counsel for EQUITY BANK RWANDA Plc pleaded about the damages claimed by DUSABE Javan SANGANO and stated that they are unfounded because EQUITY BANK Plc changed the interest rate based on the loan agreement between the two parties, and due to the fact that DUSABE Javan SANGANO unnecessarily initiated this case, he should not be awarded any damages.

DETERMINATION OF THE COURT

[43] Article 111 of the Law n°22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, provides the following : *“The claim for representation fees is an incidental claim to the principal claim aiming to repay expenses incurred during judicial proceedings. The claim for legal costs is adjudicated at the same time with the principal claim. It can also be admitted and adjudicated even if the principal claim has not been admitted.”*

[44] Article 34 of Regulation fixing the scale of fees for Advocates provides the following : *“The Advocate has the right to charge reasonable fees with a minimum of 500,000 RWF and a maximum of 3,000,000 RWF”*.

[45] The Court of Appeal finds that, on the basis of these articles, the procedural and legal fees claimed by EQUITY BANK RWANDA Plc should not be granted because it loses the case, but the damages claimed by DUSABE SANGANO Javan should be granted because he is the one who wins the case; however, as he has claimed excessive amount, such damages should be determined in the discretion of the Court, therefore, he is awarded 500,000 Frw for counsel fee and 200,000 Frw for procedural fee at this instance, in addition to the fees decided in the appealed judgment.

III. DECISION OF THE COURT

[46] Holds that the appeal of the judgment RCOMA 00349/2021/HCC decided by the Commercial High Court on 11/03/2022 filed by EQUITY BANK RWANDA Plc lacks merits ;

[47] Holds that the cross-appeal lodged by DUSABE SANGANO Javan is grounded, Equity Bank Rwanda Plc must reimburse to him 18,449,618 Frw for unauthorized interests deduction, plus accrued interests amounting to 3,367,055 Frw as above detailed ;

[48] Orders to EQUITY BANK RWANDA Plc to pay to DUSABE SANGANO Javan 18,449,618 Frw and accrued interests amounting to 3,367,055 Frw;

[49] Orders to EQUITY BANK RWANDA Plc to pay to DUSABE SANGANO Javan 500,000 Frw for counsel fee and 200,000 Frw for procedural fee at this instance ;

[50] Rules that, apart from the additional issues decided in this case, the appealed judgment is sustained ;

Rules that the court fee deposited by EQUITY BANK RWANDA Plc covers the expenses incurred in this case.