

## ECOBANK RWANDA Ltd v. JULIA SHOP

[Rwanda SUPREME COURT – RCOMAA0042/14/CS (Kayitesi R. P.J., Mukandamage and Kanyange, J.) March 18, 2016]

*Commercial procedure – Status – Filing a claim under business name – JULIA SHOP has no status to file a claim to court since it is not a company endowed with the legal personality; it is rather an individual business whereby legal action is initiated by its owner under his/ her name even when he/ she has a business name – Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 2(1) – Law N°07/2009 of 27/04/2009 relating to companies, articles 16 and 376 – Ministerial Order N°02/09/MINICOM of 08/05/2009 relating to business of low income, articles 2 and 10.*

**Facts:** JULIA SHOP requested ECOBANK RWANDA Ltd to open for it a letter of credit which was worth \$860,000. Those dollars were supposed to be given to Star Trading FZCO as payment.

After those errors in paperwork presented by Star Trading FZCO for payment were found, Star Trading FZCO requested to get back those papers. To JULIA SHOP, ECOBANK RWANDA Ltd took no notice of the issue and ordered EBI BANK S.A to release the dollars for payment under the pretext that JULIA SHOP had accepted to rectify those errors while, to it, it was not notified about the concerns that had risen from those papers.

JULIA SHOP sued to the Commercial Court and the latter held that ECOBANK RWANDA Ltd committed a fault when it ordered IBI SA Paris to release \$860,000 for Five Star Trading FZCO to get paid based on the letter of credit which does not fulfil the requirements. ECOBANK RWANDA Ltd appealed to the Commercial High Court lamenting that the claim filed by JULIA SHOP had not to be admitted at the first instance because individual business is not endowed with the status to file a claim.

The Court decided that the appeal of ECOBANK has no merit and held that cross appeal has merit in part. In so deciding, the Court found that JULIA SHOP has legal personality since in their different correspondences, JULIA SHOP was recognised, which implies that it is endowed with legal personality. The Court further held that the certificate of business registration indicates that it has legal personality.

ECOBANK Rwanda Ltd appealed to the Supreme Court stating that the Commercial High Court had relied on inexistent law and ruled that JULIA SHOP has legal personality.

JULIA SHOP filed a cross appeal requesting the accrual of the awarded damages. It insisted also that it has legal personality as demonstrated by the certificate of business registration as well as the agreements between two parties which show that those contracts were not concluded between ECOBANK RWANDA Ltd and Mukandahiro Julienne.

**Held:** Taking into account the Law governing companies which provides that, registration, nature and organization of those who cannot score a daily income of at least ten thousand Rwandan francs (10,000Frw) shall be determined by an Order of the Minister in charge of commerce, while JULIA SHOP was registered in accordance with Ministerial Order N°02/09/MINICOM of 08/05/2009 relating to business of low income, it indicates that JULIA SHOP is a business name of the sole proprietorship; hence it is not endowed with

legal personality in a such a way that it is entitled to institute a legal proceeding due lack of status.

**Appeal has merit.  
The claim should not have been received.  
Appealed judgment quashed.  
Court fees to JULIA SHOP.**

**Statutes and statutory instruments referred to:**

Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 2.

Law N°07/2009 of 27/04/2009 relating to companies, articles 16 and 375.

Ministerial Order N°02/09/MINICOM of 08/05/2009 relating to business of low income, articles 2 and 10.

**No case was referred to.**

**Author cited:**

J.P. Bertrel et M. Bertrel, *Droit des sociétés, in Droit de l'entreprise*, Paris, Wolters Kluwer France SAS, 2010/2011, p.382.

## **Judgment**

### **I. BRIEF BACKGROUND OF THE CASE**

[1] On 19 June 2012, JULIA SHOP requested ECOBANK RWANDA Ltd (LC) to open for it a letter of credit equivalent to \$860,000 due to a successful bid to supply fertilizers to MINAGRI. The payment of those dollars ought to be done for Five Star Trading FZCO.

[2] Five Star Trading FZCO submitted the papers to EMIRATES ISLAMIC BANK for the latter to submit them to EBI S.A Paris, France for the payment. When the papers were assessed by EBI S.A Paris, France, it found that they contained errors based on the requirements that Letter of Credit (UPC 600) must fulfill. EBI S.A Paris, France requested Emirates Islamic Bank to correct those papers. As to JULIA SHOP, ECOBANK RWANDA Ltd did not take note of those errors and ordered EBI BANK S.A to pay the aforementioned dollars based on the fact that JULIA SHOP had accepted to rectify the errors identified by EBI S.A Paris while JULIA SHOP claims that it was not notified of those errors.

[3] JULIA SHOP filed the claim to the Commercial Court and the latter found that the claim has merit. The Court further found out that ECOBANK RWANDA Ltd committed a fault when it ordered EBI S.A Paris to make the payment of \$860,000 to Five Star Trading FZCO based on the papers which did not comply with the requirements of the letter of credit. In consequence, the Court ordered ECOBANK RWANDA Ltd to refund the dollars to the account of JULIA SHOP and pay damages of 10,000,000Frw for the unauthorized withdrawal of those dollars from a client account and 300,000Frw for procedural and the advocate fees.

[4] ECOBANK RWANDA Ltd appealed to the Commercial High Court lamenting that the claim filed by JULIA SHOP had to be inadmissible at the first instance because as a sole proprietorship, it had no status to institute the claim. It asserted that it was rather endowed in the person after whom it was named, Mukandahiro Julienne. ECOBANK RWANDA Ltd also claimed that it was rather found at fault and ordered to pay damages which had no grounds at all.

[5] The Court found that appeal filed by ECOBANK RWANDA Ltd had no merit. It decided further that cross appeal filed by JULIA SHOP has merit only with regard to the advocate fees at appeal level, and consequently it awarded 500,000Frw.

[6] The Court explained that JULIA SHOP is a business name of the enterprise belonging to Mukandahiro Julienne which has a legal personality and that in all correspondences between them; they used JULIA SHOP which indicates that it is a company owned by Mukandahiro Julienne which was being referred to. The Court further held that even the certificate of business registration clearly indicates that it is the enterprise endowed with the legal personality and had initiated the proceeding in the name of its Managing Director who is also the owner.

[7] With regard to the merit of the case, the Court held that the defense of ECOBANK RWANDA Ltd that JULIA SHOP acknowledged all discrepancies in the e-mail dated September 5, 2012 has no merit since all emails which have been identified concern the bank slips and it is demonstrated by the letter dated September, 2012.

[8] With regard to the awarded damages challenged by ECOBANK RWANDA Ltd, the Court held that the Court of the first instance had explained that it is the faults of that Bank which prejudiced JULIA SHOP and it was so confirmed at appeal. Therefore, the awarded damages have merit. The Court further explained that the statements that the allegations that incurred loss is not supported by evidence has no merit because, had ECOBANK not ordered the payment to Five Star but rather opts for the prior rectification of the identified errors, JULIA SHOP could have received the ordered commodities and it was the tender which had to generate interests for it. The Court hence concluded that such conduct caused loss which was remedied by award of damages.

[9] The Court further found it unnecessary to examine the damages requested by ECOBANK RWANDA Ltd because it lost the claim. In addition, the damages requested by JULIA SHOP aiming at accrual of those awarded at the first instance have no merit as it did neither justify the reason of the dissatisfaction nor demonstrated the method of computation of the real incurred loss. Hence, though it might be justified that it has incurred the loss, those awarded at the first instance must be upheld.

[10] ECOBANK RWANDA Ltd appealed to the Supreme Court lamenting that the previous Court had based its decision on inexistent law and decides that JULIA SHOP has legal personality and that ECOBANK RWANDA was at fault in connection with the payment executed in favor of Five Star Trading FZCO while JULIA SHOP had admitted to rectify errors that had been identified. Furthermore, ECOBANK RWANDA Ltd was ordered to pay damages while it committed no fault. JULIA SHOP filed a cross appeal requesting the accrual of the awarded damages.

[11] The case was heard in an open court on October 6, 2015 ECOBANK RWANDA Ltd being represented by both Counsel Rubasha Herbert and Mugwaneza Claudine while JULIA SHOP was represented by counsel Mbagu Tuzinde Mbonymbuga.

## **II. ANALYSIS OF LEGAL ISSUES**

### **1. Whether JULIA SHOP is not entitled to filing a claim due to lack of legal personality.**

[12] Counsels for ECOBANK RWANDA Ltd claimed that the Court confirmed that JULIA SHOP has status to initiate a claim while it is actually only a business name. They insisted that, it is rather Mukandahiro Julienne who should have filed a claim because it is under her name that the enterprise is registered. Furthermore, they insisted that the Court considered JULIA SHOP as a company while it is a sole proprietorship. They added further that both types of entities are registered basing on different legal instruments since, for the company it is Law N°07/2009 of 27/04/2009 relating to companies as modified to date while for individual businesses, they are registered by RDB under Ministerial Order N°02/09/MINICOM of 08/05/2009 relating to business of low income. Hence, JULIA SHOP was registered based on this Order as her certificate of registration testifies.

[13] They pleaded further that filing a claim must be distinguished from commercial relationships whereby parties have been using JULIA SHOP. They stressed further that the nature of the decided case that ECOBANK RWANDA Ltd requests to be based on must be assessed. In addition they adduced that, in their view, there are no drafting deficiencies as claimed by counsel for ECOBANK RWANDA Ltd but rather the claim should have been declared inadmissible.

[14] Counsel for JULIA SHOP claimed that the latter is endowed with the legal personality as testified by the certificate of registration and stressed by the different contractual agreements between JULIA SHOP and ECOBANK RWANDA Ltd given that they were not entered into between ECOBANK RWANDA Ltd and Mukandahiro Julienne. He explained further that it is JULIA SHOP/Julienne Mukandahiro who initiated the claim on the first instance. He articulated further that in her submissions initiating the claim, she specified her business name, registration code and its representative, Mukandahiro Julienne. He concluded that the fact that it was not Mukandahiro Julienne who was initially registered then JULIA SHOP, must not be taken as if the enterprise has no legal personality while it is lawfully registered.

[15] He stated further that there are a number of cases decided by the Supreme Court which clearly indicate that the appellant or the defendants are enterprises in the name of its representative. He referred for example to the case RADA0002/12/CS whereby the appellant was ERGECO in the name of its Managing Director while the respondent was ECOSEC in the name of its Managing Director. He reiterated that with regard to this case, JULIA SHOP is the plaintiff in the name of its Managing Director and that in case there was a typographical error, and then it could be rectified in accordance with article 93 of the Law relating to civil, commercial, labour and administrative procedure.

## **THE VIEW OF THE COURT**

[16] Article 375 of Law N°07/2009 of 27/04/2009 relating to companies as modified to date states that registration, nature and organization of those who cannot score a daily income of at least ten thousand Rwandan francs (10,000Frw) shall be determined by an Order of the Minister in charge of commerce.

[17] Pursuant to the above article, a Ministerial Order N°02/09/MINICOM of 08/05/2009 relating to business of low income was enacted, whereby in its article 2, it provides that a business activity shall mean any business activity carried out by any individual regardless of sex and registered as provided for by this Order. It shall include purchase and sale, service delivery or any other professional activity done on a regular basis in order to gain profit.

[18] With regard to the business of Mukandahiro Julienne, the certificate of registration which was issued by RDB on September 21, 2011, indicates that it was issued based on article 10 of Ministerial Order N°02/09/MINICOM of 08/05/2009 as referred to above. As the title of that Order indicates alongside with its article 2, it is clear that it concerns the business carried out by individuals, and not companies since they are registered based on article 16 of Law N°07/2009 of 27/04/2009 relating to companies.

[19] This certificate of business registration indicates that it was issued to Mukandahiro Julienne as the owner of the business and that the business runs under the commercial name of JULIA SHOP. Therefore, the fact that JULIA SHOP is the business name of the sole trader implies that it has no legal personality to the extent to be able to file a claim before the court. It is rather done by the owner of the business who in this case is Mukandahiro Julienne as indicated by the business certificate.

[20] The explanations above are in conformity with the opinions of legal scholars who explain that, the sole proprietorship is the business ran by individual person and that the sole trader runs such kind of business in his/ her name. They explain further that such kind of business has no legal personality which is different from that of its owner.<sup>1</sup> These same explanations are also found on the web site which indicates that individual business has no legal personality and cannot sue to court but legal action can be brought by the business owner in his/ her name<sup>2</sup>.

[21] With regard to the case at hand, the plaintiff's submissions to the first instance indicate that it is JULIA SHOP with enterprise code N°100092512 in the name of its

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<sup>1</sup>A sole proprietorship is that which is ran by one individual that is to say without partner. It is also said such a trader exercises trade in " his own name "or" in his own name. "It is important to understand that such a sole proprietorship does not have legal personality separate from that of the individual who runs it. The individual business, unlike the company therefore has no legal personality: Droit des sociétés, in Droit de l'entreprise, Paris, Wolters Kluwer France SAS, 2010/2011, p.382.

<sup>2</sup>The individual company does not have legal personality and is not subject of law. Consequently, it cannot be real rights holder and is part of the entrepreneur's personal assets. It also cannot sue; legal actions are brought by the contractor on its behalf. The sole proprietorship has no right to contract; agreements for professional activities are concluded in the name and on behalf of the individual entrepreneur:

<http://www.distripedie.com/distripedie/spip.php> some people do not necessarily want to create a company, but still want to use a business name for the services they offer. They must then register their names at REQ. This is called an individual business. For example, Justin Morin Lemieux can have its snow removal company under the name of "snow removal service J.M.L.Enr" In the REQ, it will indicate that the snow removal service J.M.L.Enr. is a sole proprietorship whose owner is Justin. In this situation, it is the person who runs the business to be pursued, and name individual business. Indeed, this one does not legally exist is a simple name: <http://www.educaloi.qc.ca/capsules/bien-identifier-qui-il-faut-poursuivre>

Managing Director, Mukandahiro Julienne which filed the claim, and even the submissions drafted by the advocate to the court indicate that they were drafted on behalf of JULIA SHOP. This is the same case for the defense submissions before the Supreme Court whereby it is clear that they have been submitted on behalf of JULIA SHOP.

[22] Considering the above mentioned findings, JULIA SHOP was not entitled to file a legal action in the name of its Managing Director since it is not endowed with legal personality as highlighted above; it should have been done by the owner of the business who is Mukandahiro Julienne instead. Therefore, pursuant to article 2, paragraph 1 of Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure which provides that a claim cannot be accepted in court unless the plaintiff has the status, interest and capacity to bring the suit, the Court finds that the suit brought by JULIA SHOP in the name of its Managing Director, Mukandahiro Julienne, should not have been admitted since the claimant had no status to file a claim because JULIA SHOP has no legal personality. It implies that the judgment RCOM0389/14/TC/NYG which was decided by the Commercial Court as well as the judgment RCOMA0367/14/HCC rendered by the Commercial High Court must be quashed and it is not necessary to examine other grounds of appeal for ECOBANK RWANDA Ltd.

### **III. THE DECISION OF THE COURT**

[23] Holds that appeal filed by ECOBANK RWANDA Ltd has merit;

[24] Decides that the suit filed by JULIA SHOP should not have been admitted;

[25] Decides that the judgment RCOM0389/14/TC/NYG rendered by the Commercial Court as well as the judgment in RCOMA0367/14/HCC rendered by Commercial High Court are overturned;

[26] Orders JULIA SHOP to pay the court fees equivalent to 100,000Frw.