

# **KCB BANK UGANDA LTD vs. KIIZA & LOUISE (KL) LTD**

[Rwanda SUPREME COURT – RCOMAA0042/16/CS - RCOM00021/2016/SC (Kayitesi R, P.J., Mukamulisa and Mukandamage, J.) January 19, 2018]

*Law determining the jurisdiction of courts – The Jurisdiction of Rwandan Courts – Contract concluded outside Rwanda – The Rwandan Courts have jurisdiction on the claims relating to contract concluded in foreign country filed by foreigners, when that jurisdiction is provided for and related to that contract – Organic Law N°51/2008/OL of 09/09/2008 determining the organization, functioning and jurisdiction of courts, article 134 (2) – The law governing the contract or contractual obligations, article 33.*

**Facts:** KCB BANK Uganda Ltd conclude a loan contract with KIIZA & Louise (KL) Ltd in Uganda, whereby Kiiza Mulindwa Innoncent and Ndayizeye Andrée Louise were personal guarantee and they also furnished the mortgage situated in Rwanda, and they agreed that the contract will be governed by Ugandan Laws, however they included that the bank can seize any other competent court, later on the mortgaged house was auctioned by KCB Rwanda Ltd.

Kiiza& Louise (KL) Ltd defaulted on the loan contract it had with KCB BANK Uganda Ltd, which led the bank to sue the company and guarantors before Nyarugenge Commercial Court claiming for the payment of the loan, the procedural and counsel fees and also requested for provisionally execution of judgment

since the mortgaged house located in Rwanda was auctioned by KCB Rwanda Ltd.

One of the guarantors raised a preliminary objection for lack of jurisdiction because according to the loan contract Ugandan Courts have exclusive jurisdiction according to the loan contract they made.

With regard to that objection, the seized court declared itself competent on the ground that the defendants reside in Rwanda, on the merits of the case the court found the appeal of KCB Uganda Ltd with merit, it also ordered KIIZA & Louise Ltd with its guarantor to pay KCB Uganda Ltd the remaining balance of the loan after deducting the amount got from the sold mortgage, which will be paid by the receiver.

The guarantor appealed before the Commercial High Court arguing that the previous court overruled the preliminary objection for lack of jurisdiction which raised and moreover she was not a party to the loan contract which is the gist of KCB Uganda Ltd action. The court held that the claim should not have been admitted due to lack of jurisdiction of the Rwandan Courts; and it declared that Ugandan Courts are the ones with exclusive jurisdiction as provided by the contract and thus awarded damages to the appellant for being dragged into vexatious litigation.

KCB Uganda Ltd appealed before the Supreme Court arguing that the Commercial High Court ruled that the Rwandan Courts do not have jurisdiction over its claim disregarding that the owners of the sued company reside in Rwanda and even the mortgage is located in Rwanda, whilst the contract contains non- exclusive jurisdiction clause.

In her defense, the guarantor argue that the contract provides for exclusive jurisdiction of the Ugandan Courts, therefore the debtor should be sued before the competent Courts, thus she observes that the Rwandan Courts do not have jurisdiction since the parties agreed to be governed by Ugandan laws.

**Held:** The Rwandan Courts have jurisdiction on the claims relating to contract concluded in foreign country filed by foreigners, when that jurisdiction is provided for and related to that contract. Therefore, pursuant to the contract they concluded abroad, KCB BANK Uganda Ltd, a foreign company can sue KIIZA & Louise (KL) Ltd with its guarantors before the Rwandan Courts especially that the mortgage attached to that contract is located in Rwanda.

**The appeal has merit.  
The hearing of the case in merits will resume.  
The court fees suspended.**

**Statutes and statutory instruments referred to:**

Organic Law N°51/2008/OL of 09/09/2008 determining the organization, functioning and jurisdiction of courts, article 134 (2).

Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 171.

Decree -Law of 30/07/1888 relating to contracts or conventional obligations, article 33.

**No case referred to.**

# **Judgment**

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

[1] KCB BANK Uganda Ltd sued Kiiza & Louise (KL) Ltd, Kiiza Mulindwa Innoncent and his spouse Ndayizeye Andrée Louise before Nyarugenge Commercial Court claiming for the payment of the loan they owe it, the procedural and counsel fees and it requested for provisional execution of the judgment. The Counsel for Ndayizeye Andrée Louise raised an objection of lack of jurisdiction on the ground that the contract they concluded with KCB BANK Uganda Ltd, they agreed that it will be governed by Ugandan laws. With regard to this objection, basing on article 121 of the Organic Law N°51/2008/OL of 09/09/2008 determining the organization, functioning and jurisdiction of courts, the court declared that it has jurisdiction, on the fact that Kiiza Mulindwa Innoncent and Ndayizeye Andrée Louise reside in Rwanda.

[2] On merits of the case, Nyarugenge Commercial Court rendered judgment RCOM1381/14/TC/NYGE of 10/04/2015, and found the claim filed by KCB BANK Uganda Ltd with merit, and ordered Bimenyimana Eric, the receiver to instantly give KCB BANK Uganda Ltd 110,112,570Frw got from the auction of Kiiza Mulindwa Innoncent and Ndayizeye Andrée Louise's house and also ordered Kiiza & Louise (KL) Ltd, Kiiza Mulindwa Innoncent and Ndayizeye Andrée Louise to pay the debt of 160,945,741Frw minus the amount that the receiver will give it, 500,000Frw for procedural and counsel fees and to reimburse the court fees.

[3] Ndayizeye Andrée Louise appealed to the Commercial High Court arguing that the previous court did overrule the objection for the lack of jurisdiction she arose, that she was not a party to the contract which is the subject matter of KCB BANK Uganda Ltd's claim and basing on the contract of sharing mortgage concluded between KCB BANK Uganda Ltd and KCB Rwanda Ltd which has a defect, it decided that the balance of the money got from the auction of the house be given to that bank that Court rendered the judgment RCOMA0241/15/HCC on 29/04/2016 and decided that the clause 22 of the contract of 10/05/2011, both parties have agreed that it will be governed by Ugandan laws, therefore the claim would not have been admitted by Nyarugenge Commercial Court, because it did not fall into the jurisdiction of Rwandan Courts, it would be rather filed before the Ugandan Courts, it overturned the appealed judgment, cancelled the garnishment of the money got from the auction of Kiiza Mulindwa Innocent and Ndayizeye Andrée Louise's house, and ordered KCB BANK Uganda Ltd to pay 1,500,000Frw to Ndayizeye Andrée Louise for damages of being dragged into unnecessary lawsuits and counsel fees and to reimburse 7,500Frw of deposited court fees.

[4] KCB BANK Uganda Ltd appealed to the Supreme Court alleging that the Commercial High Court ruled that Rwandan courts lack jurisdiction to hear the case on its claim by disregarding that the respondents reside in Rwanda and that is where the mortgage is located, in addition, they acknowledge the loan, and that it misinterpreted clause 22 of the contract because it allows it to seize any court.

[5] The case was heard in public on 19/12/2017, Counsel Mwine Geoffrey representing KCB BANK Uganda Ltd while Kiiza & Louise Ltd and Kiiza Mulindwa Innoncent were not present although they were legally summoned as a party with unknown domicile, while Ndayizeye Andrée Louise was assisted by Me Kabera Jean Claude.

## **II.ANALYSISOF LEGAL ISSUES**

### **Whether the claim of KCB BANK Uganda Ltd is admissible in Rwandan courts**

[6] Counsel Mwine Geoffrey, representing KCB BANK Uganda Ltd argues that the claim which KCB BANK Uganda Ltd filed before the court is not related to the loan given to the defendants, rather it was aimed at to get back the money collected from the auction of the mortgage which Kiiza Mulindwa Innoncent and Ndayizeye Andrée Louise deposited with the bank, which was sold by KCB Rwanda Ltd remained which was kept by the receiver.

[7] He further argues that the Commercial High Court held that the Rwandan Courts lack jurisdiction over the case, disregarding that the owners of the Company Kiiza & Louise (KL) Ltd are Rwandese residing in Rwanda, that the mortgaged house is in Rwanda, and also they acknowledge the loan they got from that bank .He therefore argues that the court disregarded the provision of article 134 (2) and 135 of the Organic Law N°51/2008/OL of 09/09/2008 determining the organization, functioning and jurisdiction of courts and article 12 of the Law N°14/2010 of 07/05/2010 modifying and complementing Law N°07/2010 of 27/04/2009 relating to

companies which provides for national treatment of companies from the member states of East African Community (EAC), this implies that the Ugandan law cannot deprive KCB BANK Uganda Ltd the right to sue for its property in Rwanda .

[8] Counsel Mwine Geoffrey argues in addition that the fact that the Commercial High Court relied on clause 22 paragraph 1 of the loan contract of 10/5/2011 concluded between KCB BANK Uganda Ltd and KIIZA & Louise (KL) Ltd is groundless because that clause governs banking facilities, rather it should have based on clause 8,9,10 and 11 of the mortgage contract, whereby clause 8 (2) provides for that in case of contradiction between the articles of this contract, those on the mortgage prevail, therefore nowhere that contract deprive of Rwandan courts from having jurisdiction.

[9] Kabera Jean Claude, the counsel for Ndayizeye Andrée Louise argues that clause 22 literal 1 of the contract provides for that contract will be governed by Ugandan laws; in case of dispute the bank will sue the debtor before competent courts.

[10] He continues arguing that in examining of this contract, its purpose should be assessed; it is evident that two Ugandan companies concluded a contract, the laws of that country shall apply, it is not reasonable how KCB BANK Uganda Ltd seized Rwandan courts while it declared them incompetent, thus, he realises that the ruling of Nyarugenge Commercial Court that Rwandan courts lack jurisdiction has merit since the parties themselves agreed that the Ugandan laws will be applied.

[11] With regard to the Security Agreement, Counsel Kabera Jean Claude argues that it is not dated and that her client was not involved in their conclusion, therefore she is not concerned

with it basing on the provisions of article 113 of the Law N°45/2011 governing the contract.

## **VIEW OF THE COURT**

[12] Article 33 of the Civil Code Book III which was into force during the conclusion of the contract on 10/05/2011 provides for that “the contract legally made becomes a law between the parties. It may be terminated up on their agreement or up on legal ground. It has to be executed in good faith”.

[13] With regard to the jurisdiction of courts in relation to the cases of foreigners, article 134(2) of Organic Law N°51/2008/OL of 09/09/2008 determining the organization, functioning and jurisdiction of courts provides that “foreigners may be sued in Rwandan Courts by a national or a foreigner in the following circumstances: where the suit involves immovable property situated in Rwanda”, while the article 135 of this law provides that “If all the different circumstances indicated in Article 134 of this Organic Law do not suffice to establish jurisdiction of Rwandan Courts over foreigners, the plaintiff may file a suit in a Rwandan Court where he/she is domiciled or resident or the subject matter is located”.

[14] As indicated in the loan contract (Banking facility) of 10/05/2011 concluded between KCB BANK Uganda Ltd and Kiiza & Louise (KL) Ltd, both situated in Uganda, in its clause 22, both parties agreed that this facility letter shall be governed by and construed in all respects in accordance with the laws of Uganda. Nothing in this paragraph shall limit the right of the Bank to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking or



proceedings at one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.<sup>1</sup>

[15] The court finds that even though both parties chose to be governed by Ugandan laws in this clause, but they also agreed that the bank is not limited to the Ugandan jurisdiction, that it may also seize other competent jurisdictions; this implies that it can also seize the Rwandan courts if they are competent to hear the case.

[16] The court also finds that, in court submissions before Nyarugenge Commercial Court, KCB BANK Uganda Ltd requested the court to declare that the defendants owe it 680,905, 957 Ugandan shillings and 112,000 US Dollars, to pay procedural fees and to order for provisional execution of the judgment. It is also evident in paragraph 4, page 3 of the judgment RCOM 138/14/TC/Nyge, its counsel explained that the bank gave a loan to Kiiza & Louise (KL) Ltd, whereby Kiiza Mulindwa Innocent and Ndayizeye Andrée Louise were personal guarantee and they also furnished the mortgage situated in Rwanda, KCB Rwanda Ltd registered that mortgage and later sold it, then its claiming for the balance and for the provisional execution of the judgment, therefore pursuant to provisions of law and clause 22 of the contract mentioned above, KCB BANK Uganda Ltd could seize Rwandan courts against Kiiza & Louise (KL) Ltd a foreign company as well as its personal guaranties especially that its claims includes a mortgage auctioned by KCB Rwanda Ltd.

---

<sup>1</sup>Clause 22 of the loan contract (Banking facility) of 10/05/2011

[17] Basing on the legal and contract provisions mentioned above and also on the motivations given above, the Court finds its appeal with merit, since the Rwandan courts have jurisdiction over the claim filed by KCB BANK Uganda, therefore the hearing of the case in merits will proceed as provided by article 171 of the Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure that when the appeal Court overrules the appealed judgment, the Court shall hear the case in substance unless the overruling was done because there were irregularities in lodging the appeal or for lack of jurisdiction.

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

[18] It decides that the appeal of KCB BANK Uganda Ltd has merit.

[19] It decides that the Rwandan courts have jurisdiction over the claim filed by KCB BANK Uganda Ltd against Kiiza& Louise (KL) Ltd, Kiiiza Mulindwa Innoncent and Ndayizeye Andrée Louise.

[20] The hearing of the case on merits will resume on 27/03/2018.

[21] Suspends the court fees.