

## ACCESS BANK RWANDA LTD v RUHANDO

[Rwanda-SUPREME COURT – RCOMAA 00051/2017/SC (Kayitesi Z, P.J., Kayitesi R and Cyanzayire, J.) 23 April 2019]

*Commercial procedure – Case review– Confusion about the situation of facts – Confusion about the situation of facts is a misunderstanding of the subject of the dispute between the parties and the basis for its settlement, which misleads the judge to take a decision he should not have taken if he understood or got well the situation of facts.*

**Fact:** On 02/05/2013 Ruhando Ndatira Ernest requested Access Bank Rwanda Ltd to transfer \$ 76,835 to the account of Aluzinc Asia Pte Ltd Company via *international transfer* on account N°503149270301 named West Atlantic Pte Ltd, through the OCBC Bank from Singapore, for the purpose of paying for iron sheets. The money was transferred to the account mentioned above, but given to West Atlantic Pte Ltd Company because it was the account holder.

Later, Ruhando raised an issue by stating that the Bank has not fulfilled its mandate because the dollars did not reach the intended recipient. He claimed that the Company he wanted to pay was Aluzinc Asia Pte Ltd, but the money was transferred to West Atlantic Pte Ltd. He also stated that he had found that the invoice issued was forged. After that, Ruhando seized Nyarugenge Commercial Court against the Bank demanding the money to be repaid to him, alleging that it had not complied with the mandate whereas it was in its obligations. The Court ruled that the Bank should pay back the money to Ruhando.

Access Bank Rwanda Ltd has appealed to the Commercial High Court stating that the Court made confusion about the situation of facts by disregarding the evidence provided. The Court ruled that the Bank had respected the given mandate, so that it had made no mistake; and the fact that the invoice was forged, according to Ruhando Ndatira, Access Bank Rwanda Ltd was not liable. Therefore, the Court ruled that the judgement under appeal is overruled in whole; thus the Bank should not be liable.

Ruhando was not satisfied with the ruling of the case and made an appeal to the Supreme Court stating that the Court did not understand how *SWIFT* works as a standard format of money transfer through *international transfer* as it declared the nullity of the *payment order* issued without any legal basis. By making analysis of the case, the Court found that the Bank had not implemented properly the *mandate* assigned to it because it had transferred dollars to the wrong recipient. Therefore, it should be liable and pay them back plus damages arising from improper implementation of the assigned mandate.

The Bank filed an application for review of the case stating that the grave faults for confusion about the situation of facts occurred; and the existence of new evidence corroborated its application for review of Case. During the hearing, Ruhando filed an objection of inadmissibility of a claim because the Bank did not specify the reasons for case review as provided for under the Law. The Court ruled that an objection would be subjected to hearing together with the case on merits.

During the hearing, the Bank explained that it was requesting the Court to admit its application for case review stating that there had been grave faults as the Court made confusion about the situation

of facts by confusing *the mandate agreement* and international standard format for transferring money called *SWIFT*.

On the other hand, Ruhando stated that the Bank has filed an application for case review based on the repealed article and on a document called *Agreement of Participation in Automated Transfer System* as new evidence, but nevertheless they already existed during the hearing of the case at appeal level. Therefore, the application should not be admitted as this document should not be considered as ground or new evidence.

Access Bank stated that the evidence for implementing the mandate assigned was the invoice issued to Ruhando himself to mean that recipient was Aluzinc Asia Pte Ltd, but the beneficiary account was registered in the name of West Atlantic Pte Ltd Company (Account name). This is why Ruhando sustained that the money was transferred to the wrong recipient.

On the other hand, Ruhando maintained that although the Bank claimed to have relied on a payment receipt made by him, it did not prevent it from doing the wrong transfer of money, stating that the Bank had made a decision itself to change the name of recipient; he further stated that the Bank made a mistake as it would have done what it was asked for without any change.

In an incidental claim filed by Ruhando, he requested for damages to continue being calculated until the ruling of the case and on basis of the value of the dollar. Access Bank Rwanda stated that these damages may be declared unfounded; but rather, Access Bank Rwanda Ltd continued to spend money because of being dragged into unnecessary lawsuits.

**Held:** 1. Confusion about the situation of facts is a misunderstanding of the subject of the dispute between the parties and the basis for its settlement, this can lead the judge to take a decision he should not have taken if he understood or got well the situation of facts.

2. When person's name is different from his or her account, at the time of payment they consider the account of which the holder should be paid. But that is possible when it is a payment between banks themselves. When it is evident that the mandatary has implemented the mandate, it shall be deemed to have met his/her obligations.

**The application for the case review is admitted and has merits.  
The Bank should not pay dollars plus damages.  
The Court fees covers the expenses of this case.**

**Statutes and statutory instruments referred to:**

Law N°21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, paragraph 6, article 186.

Law of 30/07/ 1888 relating to contracts or conventional obligations, articles 532.

**No cases referred to.**

## **Judgment**

## BRIEF BACKGROUND OF THE CASE

[1] The case began in Nyarugenge Commercial Court, where Ruhando Ndatira Ernest filed a claim stating that he had asked Access Bank Rwanda Ltd to transfer money, via international transfer, to Aluzinc Asia Pte Ltd Company, account n° 503-149270-301, but the money did not reach the intended recipient. In case RCOM 1218/14/TC/NYGE rendered on 13/03/2015, the Court found that Access Bank Rwanda Ltd had accepted the mandate assigned by Ruhando Ndatira Ernest, but did not implemented it. The Court ordered the Bank to return \$ 76,835 debited from Ruhando Ndatira Ernest's Account n°1002150200663201 because the money did not reach the intended recipient, to pay him procedural fees and lawyer's fees equivalent to 2,000,000 Frw and make a refund of 50,000 Frw of court fees.

[2] Access Bank Rwanda Ltd filed an appeal to Commercial High Court stating that the Court, at the first instance, made confusion about the situation of facts, disregarded the evidence provided, refused summon in the case the National Bank of Rwanda or any staff of the *SWIFT (Society for Worldwide Interbank Financial Telecommunication)* to explain how international money transfers between banks works.

[3] In the Case RCOMA 0179/15/HCC tried on 20/07/2015, the Commercial High Court found that Acces Bank Rwanda Ltd had implemented the mandate assigned by Ruhando Ndatira Ernest because \$ 76,835 had been sent to Singapore as requested by him via *SWIFT*, under the name and account number provided by Ruhando Ndatira Ernest. For this reason, therefore, the Bank did not err and the fact that the invoice considered was a forgery, as Ruhando Ndatira Ernest admitted, Access Bank Rwanda Ltd may not be not liable for it. The Court declared that the judgment subjected to appeal is reversed in entirety ; and the Bank must not pay it back to him.

[4] Ruhando Ndatira Ernest was not satisfied with the ruling of the case and lodged an appeal to the Supreme Court stating that the Court did not understand the functioning of *SWIFT* as a standard format of *international transfer*, declared the nullity of *payment order* issued without legal basis, made a decision based on the evidence (receipt) that came up after the hearing was closed that has led to an unfair legal conclusion; the Court deprived him \$ 76,835 plus interests and granted to the Bank as advantage without any reason.

[5] In the case RCOMAA 0054/15/CS tried on 21/04/2017, the Supreme Court found that Access Bank Rwanda Ltd had not implemented the *payment order* issued by Ruhando Ndatira Ernest, by transferring \$ 76,835 to the Company called WEST ATLANTIC Pte Ltd which was not intended to be the recipient rather than ALUZINK ASIA Pte Ltd which was written on *payment order*. The Court decided that the Bank was involved in the disappearance of Ruhando Ndatira Ernest 76,835 USD. Therefore, given the Article 532 of the Civil Code Book III (CCLIII), it should be liable for such dollars and damages arising out of the improper implementation of the mandate assigned. The Court ordered Access Bank Rwanda Ltd to repay Ruhando Ndatira Ernest \$ 76,835 plus interests equivalent to 33,950,919 Frw and 2,700,000 Frw including the proceeding fees and the lawyer's fees.

[6] Access Bank Rwanda Ltd filed an application on 13/06/2017 for review of the case RCOMAA 0054/15/CS stating that there had been grave faults in confusing the situation of facts

which enabled the Court to make unfair decision, though the Access Bank Rwanda Ltd had provided evidence corroborating its compliance with obligations.

[7] The case was tried in public on 06/02/2018, Ruhando Ndatira Ernest represented by Counsel Zitoni Pierre Claver and Access Bank Rwanda Ltd by Counsel Rukangira Emmanuel and Counsel Buzayire Angèle. At the beginning of the hearing, Counsel Zitoni Pierre Claver recalled his objection for inadmissibility of a claim because Access Bank Rwanda Ltd did not provide the reasons for the case review as provided under Article 186 of Law N<sup>o</sup> 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure in force at that time.

[8] Based on the provisions of Article 78, paragraph 4 of the Law N<sup>o</sup> 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, the Court declared that the objection would be examined at the same time with the hearing of the case on the merits, the parties were given the opportunity to defend themselves on objections and reasons for case review. The hearing was closed and the parties were informed of the pronouncement scheduled on 02/03/2018.

[9] The case was not pronounced on that day as the Court was reviewing the case files. At that time, the Court found that Counsel Rukangira Emmanuel, representing Access Bank Rwanda Ltd, wrote to the president of the bench on 12/02/2018 stating that after the hearing he received another evidence which further supports his claim called the *Agreement of Participation in Automated Transfer System* thus requesting the hearing to be reopened.

[10] During the interlocutory judgement tried on 16/03/2018, the Court found that the document called *Agreement of Participation in Automated Transfer System* was not subjected to the hearing and the Bank sustained that it served for emphasizing its pleading ; and the Court ordered the hearing to be resumed on 08/05/2018 for the parties to defend themselves.

[11] The hearing did not take place that day because the bench was not complete, the judgement was adjourned to 26/06/2018. Given the restructuring planned in the judicial organs, the hearing was fixed in advance on 19/06/2018. On the same date, the case was heard and closed and the pronouncement set on 29/06/2018. But during the deliberations, the Court found necessary to carry out the investigation in the National Bank to understand the contents of the document called *Agreement of participation in the Automated Transfer System*, the use of the document called *Payment Order { ut6} and how SWIFT works*, and ordered that the investigation should be conducted on 11/07/2018.

[12] The case was reconvened on 27/11/2018, but was adjourned for various legal reasons. It was finally heard and closed on 02/04/2019. Ruhando Ndatira Ernest was represented by Counsel Zitoni Pierre Claver, whereas Access Bank Rwanda Ltd was represented by Counsel Rukangira Emmanuel. The pronouncement of the judgement was scheduled on 23/04/2019.

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

[13] The issues to be examined in this case are whether Access Bank Rwanda Ltd's application for review of the case RCOMAA 0054/15/CS tried by the Supreme Court on 21/04/2017 should be admitted, in case the Court observe that it should be admissible, it would examine whether

Access Bank Rwanda Ltd has not implemented the mandate given by Ruhando Ndatira Ernest to transfer 76.835 USD, so that it should be held liable for it and refund it with damages.

**- Whether Access Bank Rwanda Ltd's application for review of the case RCOMAA 0054/15/CS should be admissible.**

[14] Counsel Rukangira Emmanuel and Counsel Buzayire Angèle representing Access Bank Rwanda Ltd stated that the reason for filing an application for review of the case is that in paragraph 34 of the judgement subjected to review, the Court confused the mandate agreement and international standard format for transferring money called SWIFT by deciding that Ruhando Ndatira Ernest was not the one who brought the invoice which served for preventing the money from reaching the recipient, but it did not indicate where the invoice came from.

[15] They explained that the Court declared that the money was sent before the invoice was issued, which is not true ; because the Bank's cheque book indicated that the payment order was signed when the invoice was already issued. This is the reason why they are asking the Court to declare that there was a grave fault in confusing the situation of the facts and declare that the application is received in accordance with the provisions of Article 186,6° of the Law N° 21/2012 of 14/06/2012 aforementioned. They further explained that the Court confused the situation of the facts by declaring that the invoice indicating the name of West Atlantic Pte Ltd, the recipient, was issued after OP issuance by Ruhando Ndatira Ernest, however he received the invoice on 26/04/2013 and the transaction was made on 02/05/2013, which means that he already had it before. This is where there is a serious fault of confusing the situation of the facts.

[16] Counsel Rukangira Emmanuel and Counsel Buzayire Angèle also stated that the document " Agreement of Participation in Automated Transfer System "is a new evidence they have obtained explaining how money transfer between banks works, which indicates that the Court should have relied on account rather than on the account name. The fact that it has not done so corroborated their claim of confusion about situation of the facts. They concluded by stating that the document called Agreement on Participation in Automated Transfer System does not concern only the banks, according to Counsel representing Ruhando Ndatira Ernest, given that it protects customers of banks due to the fact that it contains the instructions of the National Bank, and the latter is the regulatory bank, the reason why Access Bank Rwanda Ltd claim should be admissible.

[17] Counsel Zitoni Pierre Claver, representing Ruhando Ndatira Ernest, stated that case review is only allowed if at least one of the grounds provided for in Article 186 of Law noof 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure has been indicated. He explained that Access Bank Rwanda Ltd stated that its application was based on the sixth paragraph of the article on the ground that the Court may have confused the mandate agreement and international standard format for transferring money called SWIFT but did not indicate the confusing points, the Court disregarded the fact that the invoice which served for the money transfer was deposited to the Bank before the money was transferred, however, the invoice was brought during the hearing, it was not brought by Ruhando Ndatira Ernest because he was not aware of where it came from, as it was first produced before the Court on 29/06/2015 by Counsel Rukangira Emmanuel. He explained that Access Bank Rwanda Ltd stated that the Court confused the invoice with the payment order, while this did not happen, even if this happened, it would be considered as criticism of the ruling of the case, this is the reason why he asked the Court

to declare the claim inadmissible, as there was no reason indicated by the claimant that would result in review of the case.

[18] Counsel Zitoni Pierre Claver also stated that the document entitled Agreement of Participation in Automated Transfer System included in the case file by Access Bank Rwanda Ltd existed already during the case review at the appeal level and the Access Bank Rwanda Ltd did not deny it. Therefore, the document should not be provided as a ground or as a new evidence for the case review. He stated that this document was issued by National Bank Rwanda so that there was no link with Access Bank Rwanda Ltd customers, this also indicated that Access Bank Rwanda Ltd claim should not be admissible.

[19] Counsel Zitoni Pierre Claver concluded by stating that Access Bank Rwanda Ltd has filed an application for case review pursuant to the Article 186, subparagraph 6 of Law no21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure providing for “confusion about the situation of facts” and such subparagraph was repealed by the new Law no22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, therefore, in accordance with the provisions of its Article 280 which provides that “the cases pending before courts at the time of publication of this Law are governed by provisions of this Law. However, procedural acts already conducted before its publication remain valid”, which should apply ; this also is a ground for which the claim of Access Bank Rwanda Ltd should not be admissible.

## **DETERMINATION OF THE COURT**

[20] The Court finds that before examination of the Article relating to the admissibility of an application based on the confusion about the situation of facts as provided for in Article 186, subparagraph 6 of Law no21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, firstly, it is necessary to examine the issue raised by Ruhando Ndatira Ernest's Counsel stating that Access Bank Rwanda Ltd has filed an application for case review pursuant to that article 186, subparagraph 6, while it was repealed by the new Law no 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure in accordance with the provisions of Article 280 which stipulates that: “Cases pending before courts at the time of publication of this Law are governed by provisions of this Law. However, procedural acts already conducted before its publication remain valid”.

[21] The Court finds that the statement of Ruhando Ndatira Ernest's Counsel should be considered unfounded because he gave the wrong interpretation of Article 280 of the new Law no22/2018 of 29/04/2018 mentioned above while it should serve for the applications filed before its publication to be admissible and examined in accordance with the existing Law when the Courts were seized, therefore this claim should be examined in accordance with Article 186, subparagraph 6 of the Law no 21/2012 of 14/06/2012 mentioned above, because the application was filed when the law was in force.

[22] With regard to the case review, the Article 186, subparagraph 6 of the Law n° 21/2012 of 14/06/2012, mentioned above, which was in force while Access Bank Rwanda Ltd filed an application and which is also the basis for application for case review, stipulates that, “for the case

review if, during the hearing, there were errors committed based on confusion about the situation of facts or basing on a non existing law”.

[23] The Court finds that the confusion about the situation of facts is a misunderstanding of the subject of the dispute between the parties and the basis for its settlement, this can lead the judge to take a decision he should not have taken if he understood or got well the situation of facts.

[24] The Court finds that in paragraph 34 of case RCOMAA 0054/15/CS rendered on 21/04/2017 subjected to review, it is indicated by the Court that Ruhando Ndatira Ernest did not admit that he was the one who submitted the invoice to Access Bank Rwanda Ltd because he got information from Access Bank Rwanda Ltd that his dollars did not reach the intended recipient, the Bank also failed to prove how it received the invoice was from him; and also nothing indicated that before transferring the dollars it had already received the invoice.

[25] The Court finds that the mentioned invoice is the one indicated in the case file (Page c 29), issued by Aluzing Asia Pte Ltd on 26.04.2013 for Rwatole Entreprises (Customer name) indicated that the Beneficiary Bank is OCBC Bank Singapore. The Name of Beneficiary Account is West Atlantic Pte Ltd and the account number is n o 503149270301. It finds that the invoice mentioned in the letter of 06/05/2013, signed by Ruhando Ndatira Ernest as President of Rwatole Entreprises, to Mr Bala explaining that there was a money transfer to West Atlantic Pte Ltd and it was a forgery (Page 28). This proves that he wrote the letter being aware of it and in good faith. Therefore, his letter have to be considered in accordance with Article 28 of Law n o 47/2017 of 23/09/2017 stipulating that : “a letter from one party to another shall be used as evidence against its author...”.

[26] The Court finds the fact that Ruhando Ndatira Ernest was aware of the invoice and had it before he issued OP on 02/05/2013, indicated that no one else had submitted it to Access Bank Rwanda Ltd, especially since it was used as an annex to the OP to explain why the money was transferred as it is usually done in this way to send money to others.

[27] The statements of Ruhando Ndatira Ernest's Counsel who maintained that the invoice was not produced at the precedent degrees, but it was produced at the appeal instance during the case subjected to review, do not constitute the ground that could exclude Access Bank Rwanda Ltd from using it at the appellate level as evidence corroborating its pleading; given that what is prohibited at the appellate level is a new argument but the new evidence is not prohibited when it may help the party to corroborate his/her element of evidence.

[28] The Court finds that the confusion about the situation of facts was based on the fact that the Court considered that when Ruhando Ndatira Ernest was preparing the OP of 76,735 USD payment, he had not yet received the invoice mentioning West Atlantic Pte Ltd, he was not the one who had submitted it to Access Bank Rwanda Ltd ; but, through the above letter of 06/05/2013 he admitted himself that he had received the invoice.

[29] Due to the fact that the Court decision was based on the issue of such invoice by confusing when it was issued, who received it and the way it was submitted to Access Bank Rwanda Ltd as it is indicated under the paragraph 34 of case RCOMAA 0054/15/CS subjected to review, the Court finds that there was a serious fault of confusion about the situation of facts which resulted to a decision that would not be made in the absence of such confusion.

[30] Based on such explanations and Article 186, 6 as described above, the Court finds that there was a confusion about the situation of facts relating to invoice, which is one of the reasons for admissibility of Access Bank Rwanda Ltd's application for review of the case RCOMAA 0054/15/CS rendered by the Supreme Court on 21/04/2017.

[31] The Court also finds that in case the Access Bank Rwanda Ltd's application should be admissible based on ground of confusion about the situation of facts, it was not necessary to examine another reason stated by Access Bank Rwanda Ltd for review of the case RCOMAA 0054/15/CS based on new evidence; especially that in interpreting the article, it states itself that the evidence corroborates their claim concerning the confusion about the situation of facts happened, as it explains how the transfer of money between the banks work which indicates that it should be based on the account instead of the account name.

- **Whether Access Bank Rwanda Ltd has not implemented the mandate assigned by Ruhando Ndatira Ernest to transfer \$ 76,835 so that it should be held liable for it and refund it with damages**

[32] Counsel Rukangira Emmanuel and Counsel Buzayire Angel representing Access Bank Rwanda Ltd, stated that Ruhando Ndatira Ernest went to Access Bank himself to complete the transfer voucher/payment order (OP) of \$ 76,835 by handwriting. This is to say that the information written on bank slip regarding the recipient of money was from him ; even the code used to transfer also indicated that it was sent by Ruhando Ndatira Ernest, therefore, due to the fact that the money had not reached the intended recipient, there was no mistake made by Access Bank Rwanda Ltd.

[33] They explained that the invoice submitted by Ruhando Ndatira Ernest himself to Access Bank Rwanda Ltd indicated that the one who was required to pay was the company called Aluzinc Asia Pte Ltd, but its account provided by Ruhando Ndatira, also written on the Payment Order was under the West Atrantic Pte Ltd name, by the fact that the money was transferred to Aluzinc Asia Pte Ltd account opened in OCBC (OVERSEAS CHINESE BANKING CORPORATION) as requested, the Bank implemented the mandate assigned by Ruhando Ndatira Ernest.

[34] They further sustained that Ruhando Ndatira Ernest did not explain why the dollars did not reach his intended recipient because he later found that the invoice he had submitted to Access Bank Rwanda Ltd was forged; and after performing an operation of money transfer, Ruhando Ndatira Ernest wrote to Mr Bala asking him to contact the Bank (OCBC) to which the dollars were transferred to help him suspending the transfer process, but they told him that he delayed, the transfer was performed, and Ruhando Ndatira Ernest even went himself to Singapore for a follow up of the issue.

[35] They supported that in order to help him, Access Bank Rwanda Ltd also wrote to its Correspondant Bank (CITI BANK NEW YORK) requesting it to suspend the transfer to OCBC, but it replied that it was performed, it was no longer possible ; and also it wrote to OCBC requesting it to refund the dollars because they were transferred to the wrong intended recipient, but it did not receive a reply. They maintained that Ruhando Ndatira Ernest intended to blame Access Bank Rwanda Ltd for his own mistakes because the invoice used was submitted by himself.



[36] Regarding the amount of dollars on the invoice that were different from the dollars written on the payment order, they averred that the fact that the figures were different was due to his collaboration with the recipient, this did not mean to indicate that the mandate assigned to Access Bank Rwanda Ltd was not implemented. Concerning what Access Bank Rwanda Ltd did after realizing that the recipient appearing on the payment order was different from the one appearing on the invoice, he replied that on the payment order it was written ALUZINC ASIA Pte Ltd which had submitted the invoice indicating that the account holder was West Atlantic Pte Ltd, therefore, Access Bank Rwanda Ltd considered the number of the account provided by Ruhando Ndatira Ernest on the payment order and the account number on the invoice issued by Aluzinc Asia Pte Ltd and it found them matching, and one person may have multiple accounts in the same bank but with different names.

[37] They stated that the investigation conducted by the Court into the National Bank of Rwanda was consistent with the explanations provided by Access Bank Rwanda Ltd since the beginning of the case hearing, as it was found that in the event of a contradiction between the name and the account number itself, the account is taken into account; and that when the one who requests for the transfer of the money fills the payment order and the bank performs the transfer, the rest to be done in order to get money to the intended recipient is carried out by other banks.

[38] With regard to the criticism of the representative of Ruhando Ndatira Ernest against the court's inquiry by stating that the interviewees' team had not been sworn in, their profiles were incomplete and they did not have sufficient knowledge of how SWIFT works and the National Bank of Rwanda has no link with its functioning, they maintained that there is no other source of information needed by the Court, except in the National Bank of Rwanda as it is the regulatory bank; all the criticisms appear in report.

[39] Counsel Zitoni Pierre Claver, representing Ruhando Ndatira Ernest, supported that the mistake made which had led Access Bank Rwanda Ltd to not paying the intended recipient was made by itself, because though it stated that the invoice considered for payment was submitted by Ruhando Ndatira Ernest, it was not true because he did not know where it came from since it was first presented to the Court on 29/06/2015 by Counsel Rukangira Emmanuel. He further stated that the amount of 71,241,12 USD on it was different from the one on payment order issued by Ruhando Ndatira Ernest amounting to 76,635 USD; it also indicated that account name of beneficiary was West Atlantic Pte Ltd, whereas on payment order it was indicated that the beneficiary name was Aluzinc Asia Pte Ltd, therefore, Access Bank Rwanda Ltd was involved in the wrong transfer of the dollars, because it committed itself to change the beneficiary name contrary to one to be paid indicated by Ruhando Ndatira Ernest.

[40] Counsel Zitoni stated that the inquiry conducted by the Court at the National Bank was illegal because the respondents had not sworn in before, their identification was incomplete, and the respondents' group could not provide accurate information because they had nothing to do with how SWIFT works, rather it should conduct the investigation on the external transaction staff from the Banking Operations Department because they were the ones who could provide accurate information on the operation of SWIFT system, SWIFT is an independent money transfer system that has nothing to do with the National Bank, except being aware of its existence and it can do nothing about it.

[41] He further stated that during the investigation by the Supreme Court, the respondents' team explained that when the customer's name is different from his/her account, at the time of payment whereas the holder is supposed to be paid, they consider the account, but this happens when it is a payment between banks themselves, this is different from SWIFT's payment method, what is common is that when a bank finds a customer's name different from his/her account, the payment process is immediately suspended and it is questionable why Access Bank Rwanda Ltd chose to change the intended recipient of the dollars.

[42] Counsel Zitoni Pierre concluded by stating that Access Bank Rwanda Ltd made a mistake because it should implement its mandate as assigned; the statements of its Counsels that the invoice was the annex to the payment order is not true, because the sender is not required to give any explanation to the bank, even on the forms there is no place to provide such information. He further explained that what emphasizes its mistake is that after the lack of dollars to be transferred, Access Bank Rwanda Ltd wrote various documents to suspend the transfer including the emails written by its employee, Aline, even the letter written by Ruhando Ndatira Ernest was for bank's requirement ; and according to the context in which things happened, both sides worked together to resolve the problem, though such letter did not waive responsibilities of Access Bank Rwanda Ltd. When asked if the Bank can transfer the money without asking the reason of the transfer, he replied that it is done when it is about debt payment, but not necessary at the time of money transfer.

## **DETERMINATION OF THE COURT**

[43] According to the case file, the Court finds that on 02/05/2013 Ruhando Ndatira Ernest requested Access Bank Rwanda Ltd to transfer \$ 76,835 to the account no 503149270301 from Bank OCBC in Singapore that was intended to be transferred to Aluzinc Asia Pte Ltd. The purpose of transfer was to pay iron sheets as indicated by a payment order issued by Ruhando Ndatira Ernest. It also finds that on 24/03/2013 Aluzinc Asia Pte Ltd had sent an invoice to Rwatole Enterprises, Ruhando Ndatira Ernest's company with an account number 503149270301 registered under the name of West Atlantic Ltd.

[44] The Court finds that in the case file there is a document entitled Payment TT197013 Details, filed by Access Bank Rwanda Ltd indicating that it has paid \$ 76,835.00 on 30/12/2014 (at 12:03:53 (Page 6). It indicated that the value date was on 02/05/2013. The ordering party was Ruhando Ndatira Ernest and the Beneficiary account or ID was account no 503149270301. The beneficiary name was West Atlantic Pte Ltd, whereas the Beneficiary Bank Account or other ID was OCBC CENTER, SINGAPORE. The recipient was different from Aluzinc Asia Pte Ltd written on the "Payment Order" issued by Ruhando Ndatira Ernest.

[45] However, the Court observes that, although it would focus only on the aforementioned document in the previous paragraph, as it is the basis of which Ruhando Ndatira Ernest invokes by stating that his money was transferred to the recipient not written on the payment order, in the case file there is another document entitled Payment TT197013 Details of 02/05/2013 written on 02/05/2013 at 16:55:05, filled by Access Bank Rwanda Ltd indicating that Access Bank paid 76,835.00 USD, with the value date of 02/05/2013, Ordering Party is Ruhando Ndatira Ernest, Beneficiary account or ID is account no 503149270301, Beneficiary Bank Account is OCBC

CENTER, SINGAPORE and the Beneficiary Name is ALUZINC ASIA Pte Ltd, which is matching to the one written on payment order issued by Ruhando Ndatira Ernest (Quote 4).

[46] The Court also finds that in the case file there are various documents indicating that after being requested to transfer \$ 76,835, Access Bank Rwanda Ltd has transferred it to Account number 503149270301 at OCBC Bank in Singapore. Among them, there is a document entitled Start of message, a letter of 06/05/2013 that Ruhando Ndatira Ernest wrote to Bala asking him for help tracking dollars for not being debited to account because the payment was based on a fake invoice (Page 28), a document entitled Account statement details indicating how and which method dollars were transferred to reach the account required. It indicated that dollars reached the Account number 503149270301 ; this is also confirmed by the intermediary bank (New York CITI Bank) in a message to Access Bank Rwanda Ltd informing that the dollars had been credited to the account but the operation could not be canceled because it was too late.

[47] The Court finds that during an investigation conducted by the Supreme Court on 11/07/2018 in the National Bank, the staff authorized by its Administration explained to the Court the functioning of *SWIFT* (as international money transfer between banks), and how to resolve the issue related to the names of the recipient. They explained that after transferring money by bank, next process is performed by other banks (*intermediary bank-correspondent bank and receiving bank*) so that it cannot have access to full details of the beneficiary account including the linkage of the credited account with the account name to make sure of its holder. The investigation report indicated that when an issue arises that the account number is different from the account holder's name, the account number is considered instead of the account name.

[48] The Court finds that Ruhando Ndatira Ernest's Counsel did not deny that \$ 76,835 was transferred to the account no. 503149270301 paid by Ruhando Ndatira Ernest himself through the payment order submitted to Access Bank Rwanda Ltd, but his denial is related to the name ALUZINC ASIA Pte Ltd written on the payment order different from the name ATLANTIC PTE LTD appearing on the account opened in Bank Oversea Chinese Banking Corporation Limited Singapore (OCBC) ; he did not also accept the invoice indicating WEST ATLANTIC PTE LTD as dollars recipient.

[49] As described above, the Court finds that the invoice bearing the name WEST ATLANTIC PTE LTD was on beneficiary account N° 503149270301 written on the payment order by Ruhando Ndatira Ernest was issued for him and no one else has brought it to Access Bank Rwanda Ltd, except him. It means that Access Bank Rwanda Ltd transferred money to the account and number provided by Ruhando Ndatira Ernest ; thus it has implemented its mandate.

[50] The Court also finds that, based on the report of the Supreme Court's investigation into the aforementioned National Bank, the fact that Access Bank Rwanda Ltd transferred \$ 76,835 to the account No. 503149270301 from Ruhando Ndatira Ernest, opened in Oversea Chinese Banking Corporation Limited Singapore (OCBC), also corroborates the implementation of its mandate because in the event of a dispute over the names of the account holders what should be considered is the account number rather than the name of the sender. This is also the same case in the document "Agreement of Participation in Automated Transfer System ", in its paragraph 39.2 where it is stated that "Where there is discrepancy between a beneficiary account number and beneficiary name and address in a message, the account number will take precedence".

[51] With regard to the amount of dollars on the invoice different from the amount on the payment order filled by Ruhando Ndatira Ernest, it would not also help to know the holder of the beneficiary account because what was needed in the money transfer was the account number. As indicated above, the fact that Ruhando Ndatira Ernest has sent less or more money would be a matter of concern to him and to whom he has sent dollars, it has nothing to do with the bank required to transfer money.

[52] Therefore, the Court finds that, according to this interpretation and to the Civil Code Book III (CCLIII), Article 532 stipulating that : "The mandatary is required to perform the mandate as long as he/she remains responsible for it, and is liable for damages and interest which could result from its non-performance. He/she is bound to complete the activity begun if there is any danger despite the death of his/her principal", Access Bank Rwanda Ltd implemented the assigned mandate and should not be liable to pay \$ 76,835 and related damages ; therefore, the case RCOMAA0054/15/CS tried by the Supreme Court on 21/04/2017 should be changed in whole.

- **A. Whether other damages claimed in this case are fair**

[53] Ruhando Ndatira Ernest's Counsel filed a cross-appeal seeking damages to be counted until the case is ruled as declared by the Supreme Court in case RCOMAA 0054/15/CS ; and be calculated on the basis of value of the dollar equivalent to 890 Frw. The damages claimed should therefore be calculated as follows :  $76,835 \text{ USD} \times 890 \text{ Frw} = 68.383.150 \text{ Frw}$ . Access Bank Rwanda Ltd's damages, from May 2013 to February 2019, for 5 years and 8; it is 1860 days. Interests are as follows :  $(68.383.150 \times 17,56\% \times 1860/360) = 62.041.557 \text{ FRW}$ , outstanding interests with the principal loan of 76.835 USD.

[54] Access Bank Rwanda Ltd's Counsels stated that the damages claimed by Ruhando Ndatira Ernest are unfounded, but so far Access Bank Rwanda Ltd was continuing to spend money due to being dragged into unnecessary lawsuits ; but they did not indicate amount of such damages in their submissions.

## **DETERMINATION OF THE COURT**

[55] The Court finds that the damages claimed by Ruhando Ndatira Ernest's Counsel are unfounded because he has won nothing in this case ; in addition, Access Bank Rwanda Ltd had the right to seize the Court when it had the right to be defended.

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

[56] The Court declares that the application for review of the case RCOMAA0054/15/CS ruled by the Supreme Court on 21/04/2017, filed by Access Bank Rwanda Ltd is admitted and has merits ;

[57] Declares that the case RCOMAA0054/15/CS tried by the Supreme Court on 21/04/2017 is changed in whole ;

[58] Declares that Access Bank Rwanda Ltd must not pay Ruhando Ndatira Ernest 76,835 USD and related damages.

[59] Hereby orders that **the** court fees deposited equal to the proceeding fees.