

ECOBANK v. INDIA NOVEMBER

[Rwanda SUPREME COURT – RCOMA 0005/10/CS (Mutashya, P.J., Havugiyaremye and Rugabirwa, J.) June 10, 2010]

Commercial law – Negotiable instruments – Travellers' cheques – The liable to pay the stolen traveler's cheques – If the travellers cheques held by the purchaser are stolen and made the opposition within the due time, they are refunded by the agent bank, unless the latter proves that it transferred the money to the issuing bank.

Commercial law – The computation of moratory damages – Interests resulting from the loss incurred from the fact that the travellers cheques were not refunded immediately after they were stolen – The time for computation starts running after 48 hours from the day of the opposition until the date of the judgment delivery.

Facts: ECOBANK SA sold to INDIA NOVEMBER, represented by Isidore Ndabarasa, travellers' cheques valuable at 8,000 USD. ECOBANK has withdrawn that money from the bank account of INDIA NOVEMBER open in that bank. These cheques were stolen while they were held by Isidore Ndabarasa who represents INDIA NOVEMBER. The latter has made the opposition to ECOBANK, which also notified CITICORP of the theft. INDIA NOVEMBER has written to ECOBANK several times requesting for getting back the money but it denied on the ground that the issuer which is CITICORP, is the one to pay the money back since it was transferred to it. CITICORP argues that it cannot pay back the money since INDIA NOVEMBER has picked the cheques without signing on them in the presence of the employee of the agent bank.

INDIA NOVEMBER lodged a claim against ECOBANK before the Commercial High Court which ordered ECOBANK to refund 8,000 USD paid for the travellers' cheques to INDIA NOVEMBER, their interests, moral damages, procedural expenses and advocate fees.

ECOBANK appealed to the Supreme Court, arguing that the judge of the first instance court ordered it to pay to INDIA NOVEMBER a lot of money without establishing its responsibility for the theft of the cheques. It also states that it cannot be held liable for the faults of CITICORP since Isidore Ndabarasa did not sign those cheques before its employee. Contrary, INDIA NOVEMBER states that ECOBANK should refund 8,000 USD in addition to damages since it did not prove that it transferred the dollars it got from the sale of the cheques to CITICORP.

Held: 1. If the the travellers cheques held by the purchaser are stolen and the purchaser makes an opposition as soon as possible to the agent bank, which fails to prove to have transferred the proceeds of travellers cheques to the issuer, the agent bank is the one to refund him/her, even though there may be some cheques that were paid before the opposition, since he/she has fulfilled his/her duty.

2. In case the traveller's cheque is stolen, and the purchaser makes an opposition as soon as possible, he/she shall be paid by the agent bank within 48 hours running from the day of opposition, failure of which, it shall pay moratory damages running from 48 hours after the opposition day up to the judgment delivery.

**Appeal has merit in part.
Cross appeal has merit.
Judgment changed in part.
Court fees to the appellant.**

No law referred to.

No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] ECOBANK SA (ex-BCDI) sold Travellers checks of CITICORP equivalent to 8.000 USD to Isidore Ndabarasa representing INDIA NOVEMBER, and consequently ECOBANK withdrew from the account that INDIA NOVEMBER was having in that bank.

[2] As stated by both parties, the travellers checks were stolen from the hands of Isidore Ndabarasa and he made an opposition on 19 June 2001, ECOBANK informed CITICORP on 20 June 2001 and then CITICORP informed other banks in order to avoid any payment in exchange for the checks. On 17 June 2001, "Chase Forex Bureau" located in Kenya, had already paid 2.000 USD to thieves who came for change.

[3] INDIA NOVEMBER addressed many letters to ECOBANK requesting to be paid back 8.000 USD withdrawn from its account. ECOBANK replied that CITICORP is the one to pay back the money because it is the issuer of the cheques and that the money was sent to it. As for CITICORP, it denied any liability because Mr Isidore Ndabarasa took checks without signing for them before ECOBANK's officer who sold them to him.

[4] INDIA NOVEMBER decided to refer the case to the Commercial High Court against ECOBANK. The judgment was rendered on 20 November 2009 and the court ordered ECOBANK to pay back INDIA NOVEMBER 8.000 USD for travellers checks, 8.960 USD of relating interests for eight years, 5.000 USD of moral damages, 5.000 USD of procedural fees, 500.000 Rwf for advocate fees, and 634.688 Rwf for proletry fees.

[5] The last hearing on merit was held on 25 April 2011, ECOBANK assisted by the counsel, Janvier Rwagatare, and INDIA NOVEMBER assisted by the counsels, Salvator Nkurikiye, Charles Shema Gakuba and John Rwajajija.

II. ANALYSIS OF LEGAL ISSUES

Which bank between the agent and the issuer is liable to refund the purchaser in case the travellers' cheques are stolen?

[6] The counsel for ECOBANK states that it sold to INDIA NOVEMBER represented by Isidore Ndabarasa Travellers checks equivalent to 8.000 USD, and then INDIA NOVEMBER

informed this bank that the checks were stolen on 19 June 2001, then the latter also informed CITICORP on 20 June 2001.

[7] He stated that the previous judge ordered ECOBANK to refund INDIA NOVEMBER too much money without proving the role of ECOBANK in the theft of the travellers checks or in fact of not repaying INDIA NOVEMBER. He argued that ECOBANK is not liable for that illegal act of CITICORP which refused to refund INDIA NOVEMBER as indicated in the letter of 26 March 2002, because Isidore Ndabarasa did not sign for that money before ECOBANK's officer who sold them to him.

[8] The counsel for INDIA NOVEMBER states that Isidore Ndabarasa bought travellers Checks from ECOBANK on 01 June 2001 equivalent to 8,000 USD. After being stolen on 16 June 2001, he made an opposition to ECOBANK on 19 June 2001, but on 17 June 2001, the thieves had already exchanged the checks equivalent to 2,000 USD with Chase Forex Bureau located in Kenya. They requested that 8,000 USD have to be refund by ECOBANK adding damages because Ecobank did not send to CITICORP dollars from the sale of the cheques.

[9] During the examination of the case in closed session in order to take final decision, the court found better to look for an expert in matters of travellers cheques for more clarifications, then Dominiko Gakwaya was hired.

[10] After swearing to tell the truth, he briefly stated that when a purchaser of the cheques, and then the agent, bank withdrew the money from his/her account, and later the cheques get stolen, the purchaser should inform the agent, bank as quick as possible. However, when the purchaser delays to inform the bank, he/she loses since he/she had been given all necessary information that can help him/her in case of theft.

[11] When the purchaser makes the opposition as soon as possible, it is the agent, bank of the travellers cheques which is liable to refund the money, even when there are some cheques paid before the opposition is made, because the purchaser would have fulfilled his/her duties, unless the agent, bank proves that the money was deposited on the issuer's account.

[12] The court finds that the expert in matters of the use of travellers cheques above mentioned explained that if the cheques were stolen, and the purchaser had made an opposition on a due time to the agent, bank, that the latter would be the liable to refund the money, unless the agent, bank proves that the money was transferred to the issuer's account.

[13] In this case, the court finds that both parties do agree that Isidore Ndabarasa, the representative of INDIA NOVEMBER, bought the travellers cheques issued by CITICORP from ECOBANK SA (ex-BCDI) equivalent to 8,000 USD, and ECOBANK withdrew the money for the cheques from INDIA NOVEMBER's account.

[14] The court finds that both parties do agree that the cheques were stolen, and that Isidore Ndabarasa made an opposition on a due time to ECOBANK on 19 June 2001, three days after they were stolen. Additionally, ECOBANK informed CITICORP on 20 June 2001, submitting of the stolen cheques numbers.

[15] Basing on the information provided by the hired expert, the court finds the fact that INDIA NOVEMBER was stolen of travellers cheques, and made an opposition on a due time, while ECOBANK did not prove that the money was sent to CITICORP, and no proof that the latter has received the money, nor did CITICORP prove to have refunded the stolen cheques, ECOBANK is liable to give back to INDIA NOVEMBER the money equivalent to 8.000 USD of the stolen travellers cheques.

[16] The court finds that some interest have to be accrued to that money, namely the court and advocate's fees as it was confirmed by the previous court. However, the court has to revise the figures in computing the interests, because it had granted an extra money, and was based to the wrong figures. Moratory interests have to be computed until the final court decision as required by INDIA NOVEMBER in its cross appeal that the court finds with merit.

[17] Regarding the moratory interests, the court finds that INDIA NOVEMBER made an opposition on 19 June 2001, that was a due time, but ECOBANK held up the money until when the case was submitted to the Commercial High Court, while it was supposed to be refunded as the use of travellers cheques so requires¹, especially that as a trader, INDIA NOVEMBER should have gained a benefit from the cheques. Evidently, ECOBANK caused it a big loss, so the moratory interest of 14 % per year has to be computed as confirmed by the previous court.

[18] Regarding the payment, experts in the use of travellers cheques explain that when the purchaser is stolen the travellers cheques and made an opposition on a due time has to be refunded within 48 hours counted from the day he made the opposition. The court finds that ECOBANK received the opposition on 19 June 2001 and following the above mentioned explanations, ECOBANK has to refund to INDIA NOVEMBER moratory interests computed from 21 June 2001 up to 10 June 2011, the day of the final judgment delivery, computed in the following terms: = 8.000 USD x 14 x 3.589 days = 11.165 USD: 100 x 360.

[19] Regarding civil damages, the previous court had granted to INDIA NOVEMBER 5.000 USD of civil damages. The court finds that INDIA NOVEMBER should not be granted civil damages and moratory interests, it was granted moratory interest for the time ECOBANK spent holding up the money, thus, the 5.000 dollars has to be annulled.

[20] Regarding the procedural and advocate fees, the previous court has granted to INDIA NOVEMBER 5.000 USD and 500.000 Rwf respectively. The court finds that INDIA NOVEMBER has paid in the course of this case, the transport, meal and the hired advocates at both levels of jurisdiction. The court finds in its appreciation that ECOBANK has to refund 2.000 USD of procedural and advocate fees to INDIA NOVEMBER because 5.000 USD and 500.000 Rwf confirmed by the previous court are excessive.

[21] The court finds that the money that ECOBANK has to refund to INDIA NOVEMBER includes 8.000 USD for travellers cheques, 11.165 USD of moratory interests and 2.000 USD of advocate and procedural fees, totalling to 21.165 USD.

¹ En cas de perte ou de vol de chèques de voyage, ... en général, le remboursement est effectué sous 48h" in <http://www.alertes-meteo.com/astuce/ chèque-voyage.htm>.

III. DECISION OF THE COURT

[22] Receives the appeal of ECOBANK and appeal of INDIA NOVEMBER because they were legally submitted;

[23] Decides that the appeal of ECOBANK has merit in parts, and the cross appeal of INDIA NOVEMBER has merit;

[24] Orders ECOBANK to refund INDIA NOVEMBER 8.000 USD withdrawn from its account for the travellers cheques, 11.165 USD of moratory interest, 2.000 USD of procedural and advocate fees, all totalling 21.165 USD, and prorated fees of 4% equivalent to 846 USD to be paid within 8 days;

[25] Orders that the judgment RCOM 0066/09/HCC rendered by the Commercial High Court on 20 November 2009 is partially modified;

[26] Orders ECOBANK to pay 40.900 of the court fees including those decided by the previous court, to be paid within 8 days, otherwise, it would be deducted from its assets by government coercion.