

ROCK GLOBAL CONSULTING Ltd v. IMPACT DISTRIBUTORS EAST AFRICA Ltd

[Rwanda SUPREME COURT– RCOMA0041/13/CS (Mukanyundo, P.J., Rugabirwa and Ngagi, J.) March 3, 2016]

Contract law – Commercial contract – Evidence in commercial contract – Commercial relationships do not heavily depend on formalities rather evidence shall be based on all the facts and legal considerations.

Damages – Breach of contract – No damages should be granted to the party who breached the contract – Law N°45/2011 of 25/11/2011 governing contract, article 137.

Facts: IMPACT DISTRIBUTORS EAST AFRICA Ltd filed a claim before the Commercial High Court requesting that ROCK GLOBAL CONSULTING Ltd pay it the debt worth 98,673.69USD and related damages. The Court ordered ROCK GLOBAL CONSULTING Ltd to pay those dollars in addition to 1,000,000Frw for damages.

ROCK GLOBAL CONSULTING Ltd appealed to the Supreme Court arguing that the Commercial High Court disregarded evidence proving that there was no delivery of the said equipments and that this court contradicted itself.

IMPACT DISTRIBUTORS EAST AFRICA Ltd argues that the Court did not disregard its arguments since it decided on them.

Held: 1. IMPACT DISTRIBUTORS EAST AFRICA Ltd cannot deny the debt that it owes to IMPACT DISTRIBUTORS EAST AFRICA Ltd basing on the fact that the latter does not produce the delivery note, besides that the commercial dealers trust each other in their transactions with disregard of given formalities, and in addition, nothing proves that both parties agreed that only the delivery note should be produced. Therefore, ROCK GLOBAL CONSULTING Ltd has to pay the total of debt it owes to IMPACT DISTRIBUTORS EAST AFRICA Ltd.

2. No damages should be granted to the party who breached the contract, therefore, the damages are granted to IMPACT DISTRIBUTORS EAST AFRICA Ltd in the discretion of the court.

**Appeal has no merit.
Cross appeal has merit.
Court fees to the appellant.**

Statutes and statutory instruments referred to:

Law N°45/2011 of 25/11/2011 governing contracts, article 137.

No case was referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] IMPACT DISTRIBUTORS EAST AFRICA Ltd states that it entered into commercial relationship with ROCK GLOBAL CONSULTING Ltd whereby the former sold ICT equipments worth of 98,673.6 USD to the latter. The payment was not done and consequently, IMPACT DISTRIBUTORS EAST AFRICA Ltd sued to the Commercial High Court requesting that ROCK GLOBAL CONSULTING Ltd be ordered to pay the debt and damages as highlighted in the subject matter of the case.

[2] In the judgment N^o RCOM0163/12/HCC delivered on February 8, 2013, the Commercial High Court held that ROCK GLOBAL CONSULTING Ltd must pay to IMPACT DISTRIBUTORS EAST AFRICA Ltd 98,673,69USD in addition to the damage amounting to 1,000,000Frw.

[3] Unsatisfied of the ruling, ROCK GLOBAL CONSULTING Ltd appealed to the Supreme Court alleging that the Commercial High Court disregarded evidence which demonstrates that there was no delivery of equipments and that there are contradictions in the ruling.

[4] The case was heard in open court but in default of ROCK GLOBAL CONSULTING Ltd while it was clear that summons were served in accordance with the Law. Nizeyimana Boniface, the counsel represented IMPACT DISTRIBUTORS EAST AFRICA Ltd.

II. ANALYSIS OF LEGAL ISSUE

A. Concerning the appeal lodged by ROCK GLOBAL CONSULTING Ltd.

A.1. Whether there exists evidence in support of the debt by ROCK GLOBAL CONSULTING Ltd to IMPACT DISTRIBUTORS EAST AFRICA Ltd.

[5] In its appeal submissions, ROCK GLOBAL CONSULTING Ltd states that the Commercial High Court disregarded its arguments whereby it requested IMPACT DISTRIBUTORS EAST AFRICA Ltd to submit evidence to demonstrate the veracity of the delivery of those equipments because once there is a purchase order, there must exist also a delivery receipt.

[6] It states further that in paragraph 12 of the judgment, the Court contradicted itself whereby it admits that IMPACT DISTRIBUTORS EAST AFRICA Ltd failed to submit conclusive evidence of the delivery of equipments and hence must pay their cost but disregarded this fact and relied on commercial transactions which it did not explain and e-mails which do not demonstrate that there was the delivery of those equipments.

[7] Nizeyimana Boniface, counsel for IMPACT DISTRIBUTORS EAST AFRICA Ltd states that the arguments of ROCK GLOBAL CONSULTING Ltd were not disregarded because its explanations were received and considered by the Court as it is indicated on page 4 paragraph 15 of the appealed judgment. With regard to evidence, the judge had duly examined it in the paragraph referred to above whereby he held that all electronic correspondences regularly demonstrate the stand of the debt and ROCK GLOBAL CONSULTING Ltd responded regularly. Hence, it cannot allege that it owes it no debt.

THE VIEW OF THE COURT

[8] With regard to whether the Commercial High Court had disregarded evidence submitted by ROCK GLOBAL CONSULTING Ltd, the Court finds that on paragraph 11 of that appealed judgment, that Court demonstrated that ROCK GLOBAL CONSULTING Ltd admits to have issued a purchase order N° PO 027-IS-05-10 which details the equipments for which IMPACT DISTRIBUTORS EAST AFRICA Ltd demands the payment, but later during the hearing of the case on merit it tried to deny that there was delivery while in the course of preliminary hearing, Niyomugabo Christophe, its counsel, had denied knowing IMPACT DISTRIBUTORS AFRICA Ltd; which the Court considered as ROCK GLOBAL CONSULTING Ltd was intending to confuse in order to escape from the obligation of payment of the debt.

[9] The Court finds further that though the Commercial High Court had explained that there is no evidence proving that IMPACT DISTRIBUTORS EAST AFRICA Ltd had delivered the equipments referred to in the case to ROCK GLOBAL CONSULTING Ltd but that based on the purchase order that was referred to above issued by ROCK GLOBAL CONSULTING Ltd which was never invalidated by the issuer, e-mails that were exchanged between those two companies and commercial usages whereby the issuer of purchase order who no longer consider it, must first make a notification to the seller and the fact that this was not done; demonstrates that the relationships between parties continued to effectively run well and the dispute arose from the payment as it is demonstrated by the e-mails referred to above.

[10] The Court finds that as it was held by the Commercial High Court, ROCK GLOBAL CONSULTING Ltd submitted no evidence to justify that it owes no debt to IMPACT DISTRIBUTORS EAST AFRICA Ltd and which has been disregarded apart from only alleging that the other party failed to show the delivery receipt as if it is the sole evidence that had to be produced by IMPACT DISTRIBUTORS EAST AFRICA Ltd.

[11] The Court finds that the absence of the delivery receipt cannot invalidate other elements of evidence which prove with no doubt that ROCK GLOBAL CONSULTING Ltd owes a debt to IMPACT DISTRIBUTORS EAST AFRICA Ltd. Among those elements of evidence there are e-mails between the Managing Directors of those Companies especially between Kabagema Patrick on the side of ROCK GLOBAL CONSULTING Ltd and Glen Matswetu on the side of IMPACT DISTRIBUTORS EAST AFRICA Ltd whereby one of them demonstrates that after more than once procrastinations, Glen Matswetu in his correspondence dated October 11, 2010 informed Kabagema Patrick that the debt that ROCK GLOBAL CONSULTING Ltd owes to IMPACT DISTRIBUTORS EAST AFRICA Ltd stands at 87,142,79USD which is comprised of the principal debt and its interests. Taking into consideration the responses of ROCK GLOBAL CONSULTING Ltd, it is clear that the latter did not deny the existence of the debt, instead, it states that even if the trust was lost but that they were seeking how to clear the payment though they could not fix the exact day. Moreover, based on the e-mails that both parties continued exchanging, it is clear that on April 18, 2011 this debt stood at 96,673,69USD and ROCK GLOBAL CONSULTING Ltd does not challenge it.

[12] Therefore, the Court finds that in consideration of these correspondences and others which followed, ROCK GLOBAL CONSULTING Ltd should not deny owing a debt to IMPACT DISTRIBUTORS EAST AFRICA Ltd on the ground that the latter does not produce the delivery receipt especially that based on the common practice in commercial transactions which privileges facts and legal consideration and the fact that nothing indicates that parties agreed to the production of delivery receipt as a prerequisite. Hence, ROCK

GLOBAL CONSULTING Ltd must pay the whole of the debt to IMPACT DISTRIBUTORS EAST AFRICA Ltd which stands at 98,673.69USD as ordered by the Commercial High Court.

A.2. Whether ROCK GLOBAL CONSULTING Ltd had not to be ordered to pay damages on the first instance.

[13] ROCK GLOBAL CONSULTING Ltd states that the damages amounting to 1,000,000Frw awarded to IMPACT DISTRIBUTORS EAST AFRICA Ltd are not grounded because it does not prove that it delivered the equipment to ROCK GLOBAL CONSULTING Ltd.

[14] IMPACT DISTRIBUTORS EAST AFRICA Ltd states that the fact for ROCK GLOBAL CONSULTING Ltd to have lost the case implies that it must pay damages.

VIEW OF THE COURT

[15] Article 137 of Law N°45/2011 of 25/11/2011 governing contracts provides 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”.

[16] With regard to appeal filed by ROCK GLOBAL CONSULTING Ltd concerning damages it was ordered to pay, the court finds that it has no merit because it was found that it breached the contract. Hence, the aggrieved party must have been awarded damages as provided for by article 137 cited in the previous paragraph.

B. Concerning the Cross appeal filed by IMPACT DISTRIBUTORS EAST AFRICA Ltd.

B.1. Whether cross appeal filed by IMPACT DISTRIBUTORS EAST AFRICA Ltd has merit.

[17] IMPACT DISTRIBUTORS EAST AFRICA Ltd requests to be paid 10,000,000Frw of damages through a cross appeal based on article 167 of Law N°21/2012 of 14/06/2012 relating to civil, commercial, labour and administrative procedure because ROCK GLOBAL CONSULTING Ltd lodged an appeal with the purpose to escape the payment of the debt and therefore delay the execution of the judgment.

VIEW OF THE COURT

[18] The Court finds with merit the damages requested by IMPACT DISTRIBUTORS EAST AFRICA Ltd. However, since the amount it requests is excessive and does not prove its basis, it is awarded 800,000Frw in addition to the amount awarded by the Commercial High Court, the total being 1,800,000Frw.

III. DECISION OF THE COURT

[19] Decides that appeal filed by ROCK GLOBAL CONSULTING Ltd has no merit.

[20] Decides that cross appeal filed by IMPACT DISTRIBUTORS EAST AFRICA Ltd has merit.

[21] Uphold the ruling of the judgment RCOM0163/12/HCC rendered on February 8, 2012 by the Commercial High Court, except with regard to damages which must accrue.

[22] Orders ROCK GLOBAL CONSULTING Ltd to pay to IMPACT DISTRIBUTORS EAST AFRICA Ltd 800,000Frw for damages in addition to 1,000,000Frw, awarded by the Commercial High Court, the total being 1,800,000Frw.

[23] Orders ROCK GLOBAL CONSULTING Ltd to pay the court fees equivalent to 100,000Frw.