

MUGWANEZA v. BANK OF KIGALI LTD

[Rwanda SUPREME COURT – RS/INJUST/RCOM 00014/2022/SC (Mukamulisa, P.J., Muhumuza and Karimunda, J.) March 31, 2023]

Civil procedure – Responsibilities – Professional responsibilities – It is the bank client's responsibility to take care of the payment order book or any other means made available to him/her for making the payment, but this does not relieve the bank of its responsibility to exercise due diligence before making the payment.

Civil procedure – Responsibilities – Professional responsibilities – A person's money deposited in the bank should not be withdrawn without the owner's permission. If the bank gives it to someone who is not entitled to it, it is considered that the money has not left the owner's account, in which case the bank is liable.

Commercial law – Loan – The interest on arrears – Calculation of the interest on arrears – The interest on arrears is calculated at a compensation rate granted to the consumer of financial services, which may not be lower than the average interest rate on loans, but may not exceed the amount of the debt to be paid.

Facts: This case started at the Commercial Court of Nyarugenge, where Mugwaneza Carine Sandrine sued Bank of Kigali (BK) Ltd, claiming that when she checked her accounts at that Bank, she found that on 12/08/2015, a person named Twajeneza Olivier withdrew 310,000 Frw from account number 00051-0609850-07, opened in Rwandan franc currency, and on 26/08/2015, Sinayobye Siméon withdrew 11,500 USD from account number 00040-0294342-77, opened in USD currency. She claims that after her accounts were broken into, she asked BK Ltd to return the stolen money and dollars, but it refused, so she decided to seize the court.

BK Ltd claims that it did not commit any error and that the claim by Mugwaneza Carine Sandrine is unfounded because she was responsible for safekeeping the payment order book given to her by the Bank, which the thieves used to withdraw the money and dollars, and that the Bank checked and found that the document used in the fraud was provided by the account holder herself.

The Commercial Court of Nyarugenge noted that there was a case decided by the Intermediate Court of Nyarugenge on 18 March 2016, in which Sinayobye Siméon was convicted of using forged documents when he withdrew USD 11,500 from the account n° 00040-0294342-77 of Mugwaneza Carine Sandrine, as he himself admits; that the records of the investigation carried out in the criminal case show that the signature on the payment order used to withdraw the dollars was forged and that the Bank employee who helped Sinayobye Siméon was involved in the theft; that the Bank, as a professional, did not fulfil its obligations to protect deposited funds; but that there is no evidence that 310,000 Frw was withdrawn using forged cheques, so that Mugwaneza Carine Sandrine's claim is partially justified and she confirmed that BK Ltd should pay her 11,500 USD, in addition to 2,012 USD as financial damage caused by the Bank, calculated at a rate of 15%.

BK Ltd appealed to the Commercial High Court, claiming that it should not be ordered to return to Mugwaneza Carine Sandrine the 11,500 USD that was withdrawn from her account, and that it

should not be ordered to pay 15% interest, thus seeking compensation for being dragged into unnecessary lawsuits.

Mugwaneza Carine Sandrine submitted that the appeal of BK Ltd should not be admitted because the Nyarugenge Commercial Court, in its judgment RCOM 00860/2016/TC/NYGE of 21/10/2016, explained that the Bank, as a professional, failed to comply with its obligations to protect her account by allowing the withdrawal of 11,500 USD from her account.

With regard to the interest calculated at 15%, the Commercial High Court found that BK Ltd was not liable for the theft committed on Mugwaneza Carine Sandrine's account, that the Bank was not concerned by such interest, and therefore ruled that BK Ltd's appeal was justified.

Mugwaneza Carine Sandrine wrote to the Office of the Ombudsman requesting a review of the judgment RCOMA 00642/2016/CHC/HCC rendered by the Commercial High Court on grounds of injustice, stating that Sinayobye Siméon used her payment order book to withdraw money from her account, which he was not authorized to do by the owner, and that BK Plc was negligent as a professional, because it failed to discharge its responsibility of ensuring the security of the customer's account.

Mugwaneza further states that in respect of 11,500 USD, she was awarded 15% interest in judgment RCOM 00860/2016/TC/NYGE, whereas commercial banks normally charge 18% interest, and she requests this Court to correct the error and therefore the interest awarded to her should be calculated at the rate used by regular banks with effect from 12/08/2015. She states that the interest due to her for the past seven years and four and a half months' amounts to USD 15,266.25, but that she requests the Court to calculate this interest until the judgment is delivered; she also requests the return of 310,000 Frw that were withdrawn from her account, together with its interest calculated at 18%.

BK Plc submits that in the contract Mugwaneza Carine Sandrine entered into with the Bank, each party had an obligation to comply with, so they consider that the Bank should not be held responsible for the money because Mugwaneza Carine Sandrine was the one who failed in her responsibility to take care of the payment order book given to her by the Bank, therefore she must take full responsibility for what happened to her account.

BK further states that it carried out an audit and found that the payment order document used for the withdrawal of USD 11, 500 passed through the machine designed for that purpose and it was confirmed that such an order document was issued and signed by Mugwaneza Carine Sandrine herself and that before the alleged dollars were withdrawn, the Bank called Mugwaneza Carine Sandrine and she issued a payment authorisation to the bearer of that order document.

BK added that in the criminal case referred to by Mugwaneza Carine Sandrine, the Court has shown that the robber is Sinayobye Siméon, that she did not invoke any involvement of the Bank in the robbery of the dollars in question, therefore she asks this Court to confirm that the Bank is not responsible for the negligence of Mugwaneza Carine Sandrine, who failed in her duty to properly safeguard the payment order book issued to her.

Held: 1. It is the bank client's responsibility to take care of the payment order book or any other means made available to him/her for making the payment, but this does not relieve the bank of its responsibility to exercise due diligence before making the payment.

2. A person's money deposited in the bank should not be touched without the owner's permission. If the bank gives it to someone who is not entitled to it, it is considered that the money has not left the owner's account, in which case the bank is liable.

3. The interest on arrears is calculated at a compensation rate granted to the consumer of financial services, which may not be lower than the average interest rate on loans, but may not exceed the amount of the debt to be paid.

The application requesting the review of the judgment due to injustice has merit in part; Court fees deposited cover expenses incurred in this case.

Statutes and statutory instruments referred to:

Law N° 47/2017 of 23/9/2017 governing the organisation of banking, article 112;

Regulation n°12/2017 of 23/11/2017 on credit classification and provisioning, article 8;

Law n° 25/2005 of 04/12/2005 on tax procedure (this article is referred to as article 12 of the Law n° 01/2012 of 03/02/2012 modifying and complementing law n° 25/2005 of 04/12/2005 on tax procedures as modified and complemented to date), article 59;

Regulation N°07/2010 of 27/12/2010 of the National Bank of Rwanda on electronic fund transfers and electronic money transactions, article 2.

Cases referred to:

Judgment RS/INJUST/RC 00012/2021/SC for Nsengiyumva v Ntagungira et al. rendered by the Supreme Court on 22/07/2022.

RS/INJUST/RCOM 00006/2022/SC; Banque Populaire du Rwanda Plc v Nyamasheke District rendered by the Supreme Court on 27/01/2023.

RS/INJUST/RC 00024/2018/SC; Ngizweninshuti v Muhima rendered by the Supreme Court on 21/02/2020.

RS/INJUST/RC 00007/2018/SC Nditiribambe v Gatera rendered by the Supreme Court on 13/03/2020

RS/INJUST/RC 00021/2022/SC; Mukagatare Régine et al. v SANLAM AG Plc rendered by the Supreme Court on 17/03/2022.

RCOMA 0171/12/CS rendered by the Supreme Court on 03/01/2014, paragraphs 16-20.

RS/INJUST/RCOM 00001/2017/SC; Sebahizi Jules v Equity Bank Rwanda Ltd, rendered by the Supreme Court on 26/01/2018.

Foreign cases referred to:

Judgment Re (II ZR 185/85), (1987) E.C.C. 254 (1985).

Judgment Stokes v. Commonwealth, 49 Va.App. 401 (2007).

Judgment Central Nat. Bank of Richmond v. Bank of Richmond v. Bank..., 171 Va. 289 (1938).

Judgment Cairo Banking Co. v West, 187 Ga. 666 (1939).

Judgment Stokes v Commonwealth, 49 Va.App. 401 (2007).

Judgment

I. BACKGROUND OF THE CASE

[1] This case started at the Commercial Court of Nyarugenge, where Mugwaneza Carine Sandrine sued Bank of Kigali (BK) Ltd, currently changed to Bank of Kigali Plc, hereinafter referred to as BK Plc, claiming that when she checked her accounts at that Bank, she found that on 12/08/2015, a person named Twajeneza Olivier withdrew 310,000 Frw from her account number 00051-0609850-07, opened in Rwandan franc currency, and on 26/08/2015, Sinayobye Siméon withdrew 11,500 USD from her another account number 00040-0294342-77, opened in USD currency. She claims that after her accounts were broken into, she asked BK Ltd to return the stolen money and dollars, but it refused, so she decided to seize the court.

[2] BK Ltd claims that it did not commit any error and that the claim by Mugwaneza Carine Sandrine is unfounded because she was responsible for safekeeping the payment order book given to her by the Bank, which the thieves used to withdraw the Rwandan francs and dollars, and that the Bank checked and found that the document used in the fraud was provided by the account holder herself.

[3] In the judgment RCOM 00860/2016/TC/NYGE rendered on 21/10/2016, Nyarugenge Commercial Court found that:

- i. There exists the judgment RP 0762/15/TGI/NYGE rendered by Nyarugenge Intermediate Court on 18/03/2016, in which Sinayobye Siméon was convicted of the crime of using forged documents when withdrawing 11,500 USD from the account n° 00040-0294342-77 of Mugwaneza Carine Sandrine, as he himself admits it.
- ii. There are statements from the investigation carried out in the criminal case that indicate that the signature on the payment order used to withdraw the disputed dollars was not authentic (forged) and that the robbery was carried out with the involvement of a Bank agent (employee) who helped Sinayobye Siméon;
- iii. The Bank, as a professional, failed to perform its duties of safeguarding the deposited funds;
- iv. There exists no evidence that the 310,000 Frw was withdrawn using a forged cheque.

[4] The Court ruled that the claim filed by Mugwaneza Carine Sandrine has merit in part, and held that BK Ltd should return to her 11,500 USD, in addition to 2,012 USD as financial damage caused by the Bank, calculated at a rate of 15%, 1,000,000 Frw for the procedural and counsel fees as well 50,000 Frw for court fee she had already deposited.

[5] BK Ltd appealed to the Commercial High Court, claiming that it should not be ordered to return to Mugwaneza Carine Sandrine the 11,500 USD that was withdrawn from her account, and that it should not be ordered to pay 15% interest, thus seeking compensation for being dragged into unnecessary lawsuits.

[6] Mugwaneza Carine Sandrine submitted that the appeal of BK Ltd should not be admitted because the Nyarugenge Commercial Court, in its judgment RCOM 00860/2016/TC/NYGE of

21/10/2016, explained that the Bank, as a professional, failed to comply with its obligations to protect her account by allowing the withdrawal of 11,500 USD from her account.

[7] In the judgment RCOMA 00642/2016/CHC/HCC rendered on 06/01/2017, the Commercial High Court found that:

- i. The fact that Mugwaneza Carine Sandrine admitted that her cheque books had been stolen, but did not inform BK Ltd so that it could stop payment using such cheques, is her fault and the Bank should not be held liable for this, as per BK Ltd's General Conditions in the section on receipt books, where it is stated that the responsibility for protecting the payment order rests with its holder, and the latter is obliged to notify the Bank in the event that one of its pages/paper is stolen;
- ii. The fact that the signature on the cheque used to withdraw the dollars was not found to be faulty means that the Bank was not negligent or complicit, as it is required to check before making a payment;
- iii. There is no evidence that Mugwaneza Carine Sandrine's phone was taken out of service for three hours;
- iv. Mugwaneza Carine Sandrine has been extremely negligent in putting her payment order book at the reach of the public, hence resulting in her suffering robbery; therefore, she bears herself the responsibility to sue Sinayobye Siméon who robbed her, especially since he admits to having done it.

[8] On the issue of the interest calculated at a rate of 15%, the Commercial Court held that BK Ltd was not liable for the theft committed on Mugwaneza Carine Sandrine's account, so that the Bank was not liable for this interest, and held that BK Ltd's appeal was well-founded, that the judgment under appeal is reversed and that Mugwaneza Carine Sandrine should pay BK Ltd 500,000 Frw for the procedural fee and return to BK Ltd 75,000 Frw deposited as court fee.

[9] On 22/12/2017, Mugwaneza Carine Sandrine wrote to the Office of the Ombudsman requesting for the review of the judgment RCOMA 00642/2016/CHC/HCC rendered by the Commercial High Court on 06/01/2017 for being vitiated by injustice. After examining that request, the Office of the Ombudsman wrote to the President of the Supreme Court requesting for the review of the said judgment. After examining the report of the Inspectorate General of Courts, the President of the Supreme Court issued a decision no. 158/CJ/2022 of 29 August 2002, ordering that the case be transferred to the registry of the Supreme Court for rehearing.

[10] The case was heard in public on 20/02/2023, Mugwaneza Carine Sandrine being assisted by Counsel Bizumuremyi Isaac, and BK Plc represented by Counsel Rutagengwa Jean-Damascène.

[11] The parties debated whether the Court should order BK Plc to return the USD 11,500 and 310,000 Frw withdrawn from Mugwaneza Carine Sandrine's accounts, to pay her the interest earned thereon, calculated at the rate of 18% per annum at which commercial banks normally make loans, and to determine whether any compensation should be awarded in this case.

II. ANALYSIS OF LEGAL ISSUES

II.1. Whether BK Plc should return to Mugwaneza Carine Sandrine 11,500USD withdrawn from her account N° 00040-0294342-77

[12] Mugwaneza Carine Sandrine and her Counsel Bizumuremyi Isaac allege that Sinayobye Siméon used the payment order book with the number AA21910409 to withdraw USD 11,500 from the account number 00040-0294342-77 without her authorisation. They allege that BK Plc, as a professional, failed in its responsibility to protect the security of the client's account because, if it had properly checked, it would have seen that the payment order used was signed by Twajeneza Olivier instead of Mugwaneza Carine Sandrine. They state that these dollars could not have been withdrawn without the involvement of a Bank employee working at the Gisimenti branch, which also shows that, in reaching its decision, the Commercial High Court ignored the statements referred to in the judgment n° RP 0762/15/TGI/NYGE and the laws in force at the time, in particular articles 482¹ and 493² of the Civil Code, Book III, making it impossible to confirm that the Bank was grossly negligent.

[13] They state that Mugwaneza Carine Sandrine was abroad on the day the payment order was used at BK Plc, and this is confirmed by the bank's statement that they tried to contact her telephone number 0788308017, which she gave at BK Plc, and found that it was not available. Two days later, with the involvement of a Bank employee, the Bank called another number, 0785978930, given to them by Sinayobye Siméon, whose owner they did not know, as they later found out that it was registered to a person called Akayezu Delphine, who supposedly authorised them to withdraw the disputed dollars. They found that the Bank failed to indicate what had removed their suspicion after they found that the phone number 0788308017 was unavailable because they could not prove that the phone number 0785978930 they had actually called was registered to Mugwaneza Carine Sandrine. And with regard to the phone number 0788867979, they claim that it was once registered to Mugwaneza Carine Sandrine, and she stopped using it after getting a new phone number 0788308017.

[14] They claim that the Bank employee who works at the Gisimenti branch is the one who informed Sinaobye Siméon that there were dollars in Mugwaneza Carine Sandrine's account, this is why he went there to withdraw them instead of going to the BK Plc Nyamirambo branch where she opened the account. They argue that BK Plc's claim that it spent nine days searching for Mugwaneza Carine Sandrine before approving the payment order is not true because Sinayobye Siméon admitted that he was paid after only two days. They found that once the Bank became suspicious of the payment order and realised that the phone number provided by the account holder was not available, it did not have to rush to authorise the withdrawal of those dollars from the account. They therefore ask this Court to declare that BK Plc failed to protect what was deposited with it and is therefore liable to return to Mugwaneza Carine Sandrine what was stolen from her.

¹ This article stipulated that *“In general, a deposit is an act by which a person receives something from another, with the obligation to keep it and return it in kind”*.

²This article stipulated that *“The depositary must take the same care in the safekeeping of the thing deposited as he takes in the safekeeping of the things belonging to him”*.

[15] Counsel Rutagengwa Jean-Damascène, representing BK Plc, argues that once Mugwaneza Carine Sandrine opened an account and received a booklet (payment order booklet), she immediately had a responsibility to protect it in the same way she protects her cash at home. He submits that once the problem was known, the Bank carried out an audit and found that the payment order used to withdraw USD 11 500 had been checked on the designated machine and it was confirmed that it belonged to Mugwaneza Carine Sandrine and that the signature on it was hers. He submits that the Bank waited nine days before withdrawing the dollars, then called Mugwaneza Carine Sandrine at 0785978930 and she authorised the bearer of the payment order to be paid.

[16] He states that the dollars were transferred to Sinayobye Siméon's account on 26/08/2016, and he withdrew them on 27/08/2016. On the same day, two hours after the withdrawal of the dollars, Mugwaneza Carine Sandrine raised a question in BK Plc, saying that there were dollars withdrawn from her account, and having noticed this transaction while she was not registered in SMS banking, it is a clear indication that she was in contact with Sinayobye Siméon. He adds that this is also upheld by the statements of Niyoyita Cyprien, who confirms that he called Mugwaneza Carine Sandrine on 0788308017, informing her that she was going to be robbed on her account, but Mugwaneza Carine Sandrine, instead of informing the Bank or the Police, disconnected the phone number she had provided to the Bank. He also states that when the dollars were withdrawn, Mugwaneza Carine Sandrine was in Rwanda, as Sinayobye Siméon stated that he had received the payment order from the owner.

[17] Counsel Rutagengwa Jean Damascène further argues that the Bank has no obligation to call the account holder before issuing payment to the person bearing the payment order signed by the owner, that the Bank called 0785978930 only because it was suspicious, and that this number used to belong to Mugwaneza Carine Sandrine before it was subjected to sim swap. He submits that the fact that the dollars were withdrawn from the Gisimenti Branch instead of Nyamirambo branch, in itself is not a problem because the customer is allowed to borrow from the nearest branch and that the Bank employee who is accused of helping Sinayobye Siméon to steal those dollars was not revealed in order to be held liable.

[18] He concludes by stating that, in the criminal judgment cited by Mugwaneza Carine Sandrine, the court identified the thief as Sinayobye Siméon, and the court did not implicate the bank in the theft of the contested dollars. Consequently, he urges this Court to declare that the Bank is not accountable for the negligence of Mugwaneza Carine Sandrine, who failed in her responsibilities to safeguard the payment order booklet issued to her.

DETERMINATION OF THE COURT

[19] Article 2 of the Regulation N°07/2010 of 27/12/2010 of the National Bank of Rwanda on electronic fund transfers and electronic money transactions into force in 2015 at the time the disputed dollars were withdrawn from the account of Mugwaneza Carine Sandrine,³ reads that “Payment order is a payment instruction by a sender to a receiving institution, transmitted orally, electronically, or in writing, to pay, or to cause another bank or payment service provider to pay, a fixed or determinable amount of money to a beneficiary.

³ The present Regulation was repealed by the Regulation n° 31 /2019 on protection of payment service users.

[20] The same article also reads that "Security procedure refers to a procedure established by agreement of a customer and a receiving institution for the purpose of:

- Verifying that a payment order or communication amending or cancelling a payment order is that of the customer, or
- Detecting error in the transmission or the content of the payment order or communication.

A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, call-back procedures, or similar security devices..."

[21] The Regulation of 2005 of the Bank of Kigali Ltd on payment order provides that: *(He (the customer) is also required to take great care of payment order booklet. The bank declines any liability for any damage arising from loss or removal of a form. Should this happen, the holder must urgently inform the bank in order to avoid any malpractice through the abusive use of a stolen or lost form.)*

[22] The case file contains the payment order (O.P) of Mugwaneza Carine Sandrine with 11,500 USD issued to Sinayobye Siméon on 14/08/2015. In the mentioned payment order, it is handwritten that Mugwaneza Carine Sandrine's phone number is **0788867979**. When the payment order was received by the Bank on 17/08/2015, as evidenced by the bankslip dated 17/08/2015, the first employee to handle it sought approval from their superior to proceed with the payment of the specified dollars (requested derogation). The superior, upon review, identified Mugwaneza Carine Sandrine's phone number as 0788308017. The explicit instruction given to the bank employee was not to authorize the payment unless confirmation was obtained from the account holder (*0788308017, do not force if the owner is not confirming*). The bankslip also featured an additional message stating, "We spoke to her on **0785978930**. She confirmed the ID and OP". The case file also includes another bankslip dated 26 August 2015, indicating that Sinayobye Siméon received 11,500 USD.

[23] The case file also contains the letter dated 08/09/2015, in which Bank of Kigali Ltd wrote to Mugwaneza Carine Sandrine. In the communication, the Bank initially stated her phone number as 0788308017. The letter further clarified that the dollars were disbursed to Sinayobye Siméon in accordance with the law. This decision was based on the Bank's verification, which confirmed that the payment order used was the one issued to Mugwaneza Carine Sandrine, bearing her signature. Additionally, for security validation of the payment order, the Bank contacted her by phone, and she confirmed the payment of those dollars (*As a further security check, the Bank called you and confirmed the payment to be effected, then the transaction was processed.*)

[24] The case file also contains the letter dated 10/09/2015, in which Bank of Kigali Ltd responded to her letter, wherein she requested the identity card of Sinayobye Siméon and proof that the Bank contacted her by phone and that she confirmed the payment to Sinayobye Siméon. The Bank reiterated on the letter's heading that Mugwaneza Carine Sandrine's phone number was 0788308017. Furthermore, the Bank clarified that the requested proof of her being contacted on the phone number 0785978930 before the payment of the disputed dollars should not be sought from the Bank. Instead, the Bank specified that this proof should only be provided by the company MTN (*the proof you requested the bank to provide indicating that you were called on Mobile N°*

0785978930: before paying the amount above can only be given by the telecommunication company MTN not the bank).

[25] The Court finds that the issue for debate in the instant case is to determine whether the Bank failed in its responsibility to being vigilant, thus failing to protect the account and money of its customer, as a professional institution, so that it has to return to Mugwaneza Carine Sandrine 11,500 USD withdrawn from her account N° 00040-0294342-77.

[26] The issue of the security of customers' accounts and funds has been reiterated by this Court in various cases. In the case of *I & M Bank Rwanda Plc v. Coffee Business Center (CBC) Ltd*, this Court emphasized that, prior to making any payments, the bank is obligated to conduct a thorough examination to ensure that the submitted documents meet all necessary requirements. The bank's examination encompasses various aspects, including the nature of the document, the authenticity of its signature, the method of transfer, and whether it has been placed under the caveat. In the referenced case, the Court determined that the bank's assertion of having verified the document submitted to it before making the payment was deemed untrue, because, had the bank indeed conducted a proper verification, it would have detected that the signature on the document did not match that of the account holder.⁴

[27] In the case of *Sebahizi Jules v. Equity Bank Rwanda Ltd*, the court found that the bank had withdrawn funds from the customer's account and transferred the amount to Singapore based on the e-mail indemnity and Diaspora Application for Funds Transfers filled in with a machine. The bank did not even bother to call the account holder, despite the agreement stipulating that the Diaspora Application for Funds Transfers would be filled in manually. Furthermore, the agreement explicitly stated that no dollars could be withdrawn from the account without prior communication via a telephone call for approval. In the court's findings, it was established that Equity Bank Rwanda Ltd admitted to not calling Sebahizi Jules before transferring the disputed dollars. This action was found to be in violation of the bank's regulations, as well as the general banking practices in Rwanda, which typically require banks to contact customers who have signed cheques for payment to others before executing the transfer".⁵

[28] The issue concerning the bank's duty to protect customers' accounts was underscored in the case II ZR 185/85 as determined by the Supreme Court of Germany (Bundesgerichtshof). This case involved a citizen whose cheque page was stolen, and the thief meticulously replicated his cheque. Subsequently, the imitated cheque was deposited with the bank, and payment was received by the thief. After the bank employee discovered that the withdrawal amount was significantly larger than what the account holder typically withdrew, and considering that the account holder had not contacted the bank to authorize the payment of the cheque as was customary, the bank employee sought approval for the payment from the branch manager. Subsequently, the branch manager granted approval for the payment.⁶

[29] In determining whether the bank was negligent in allowing the payment of the said cheque, the Court found that:

⁴ See judgment RCOMA 0171/12/CS rendered by the Supreme Court on 03/01/2014, paragraphs 16-20.

⁵ See judgment of *Sebahizi Jules v. Equity Bank Rwanda Ltd*, n° RS/INJUST/RCOM 00001/2017/SC rendered by the Supreme Court on 26/01/2018, paragraph 26. ⁶ See judgment *Re (II ZR 185/85)*, (1987) E.C.C. 254 (1985).

⁶ See judgment *Re (II ZR 185/85)*, (1987) E.C.C. 254 (1985).

- i. A bank breaches its duty of discretion outlined in the agreement with its customer when it processes a cheque demanding payment of an amount significantly higher than the customer's usual check payments without verifying the authenticity of the cheque;
- ii. A bank contravenes its duty of prudence when it honors a check without obtaining authorization from the customer, especially if, in previous instances, the customer had consistently initiated contact with the bank to approve withdrawals from their account before the transaction was executed;
- iii. Even though the amount specified on a check may not always be the sole factor rendering the cheque suspicious, the fact that the cheque exceeds the usual payment amount by the customer is a significant consideration in cases of bank negligence. In such situations, the suspicion of potential bank failure and the bank's failure to fulfill its obligation to scrutinize and verify the cheque can outweigh the mere fact that the cheque is written for a substantial sum.⁷

[30] In that particular case, the German Supreme Court determined that when a bank observes a cheque written for an amount surpassing the customer's typical withdrawal or payment pattern, it should promptly consider the possibility that the cheque is being employed for illicit purposes. Consequently, the court held that the bank is obligated to promptly request clarification regarding the legitimacy of such a cheque. The court found that this crucial step was not taken, which could potentially jeopardize many customers. Therefore, the Court of Appeal was justified in its decision, asserting that the bank had a responsibility to contact the account holder before processing the cheque to verify the authenticity of the transaction and ensure that it was indeed the person who issued the cheque.⁸

[31] The Court acknowledges the perspective of expert Thierry Bonneau, as articulated in the book "Droit bancaire." Bonneau emphasizes that while a bank should refrain from interfering in

⁷ "A bank is in breach of its duty of care under its contract with its customer if, on presentation of an unusually large cheque payable to cash, albeit one which would still leave a sizeable credit balance in the account, it does not make inquiries as to the genuineness of the cheque... A bank which is presented with a cheque which appears genuine on the face of it but is made out for a sum many times higher than the customer would normally write such cheques for, and where the customer on earlier occasions when large amounts were drawn had telephoned the bank to authorise it to pay to a named bearer, the bank's natural suspicions regarding the cheque should be aroused. It is settled case law that, although a cheque made out for a large amount is not in itself suspicious, the question whether a cheque is for an unusually large amount in the normal course of business transactions between the parties is relevant to the question whether the bank was negligent in paying out. The suspicion that there may be a wrongful application of the cheque outweighs the assumption that the customer has by exception written an unusually large cheque." See judgment Re (II ZR 185/85), (1987) E.C.C. 254 (1985).

⁸ "A bank which, as in this case, knows of circumstances from which it must be inferred that a cheque to cash for a large sum exceeds by an unusual amount the sums involved in other cheque transactions usually affected by the customer must take account of the possibility that the cheque is being misused... If the bank were allowed to refrain from doing so there would be an increase to a no longer justifiable extent in the risk borne by the customer in the context of the apportionment of risks... In the results there are no grounds in law for objecting the appeal court's findings in the circumstances of the case that the defendant (the bank) was under a duty to telephone to the plaintiff before paying out on the cheque in order to ascertain whether he had drawn it." See judgment Re (II ZR 185/85), (1987) E.C.C. 254 (1985).

its clients' activities, it bears a duty of prudence. This duty entails monitoring and exercising control, even proactively seeking information to ensure transparency in all activities conducted on the account. This duty becomes particularly crucial if the bank observes any activity on the account that deviates from the usual or appears unusual in nature. And Jérôme Lasserre Capdeville and his colleagues, as outlined in the book "Droit Bancaire," assert that while the primary responsibility for monitoring account activities lies with the account owner, the bank must exercise prudence. They emphasize that the bank should be cognizant of the fact that individuals are legitimately seeking to withdraw the funds to which they are entitled.⁹

[32] Although this law should not be relied upon in making a decision in this case because it did not exist at the time Mugwaneza Carine Sandrine's account was compromised, it does provide evidence that a financial service provider must ... *act with care, skill and discretion in relation to the financial product or service it provides.*

[33] Among other things, it requires financial service providers to integrate consumer protection into the culture of their business centres (Article 3), to establish effective channels of communication with consumers, including telephone calls, with the provision that calls made by the bank should be supported by other means of communication that can serve as evidence (Article 21), and to inform the consumer of financial services of any operation carried out on his account (Article 22).

[34] The foregoing elucidations, when read together, mean that:

- i. It is the responsibility of the bank's client to take care of the document requesting the payment or any other means given to him by the bank to make the payment, but this does not remove the bank's obligation to exercise due diligence before confirming the payment;
- ii. It is the bank's responsibility to check that the payment order has actually been submitted by its customer and that there have been no errors in sending the message requesting payment to the bank;
- iii. If there are unusual aspects in a payment order, such as an atypical manner in which it is made or if the requested amount exceeds the customer's usual transaction pattern, the bank bears a responsibility to seek additional information from the customer before processing the payment.

[35] In relation to this case, the Court finds that the Bank was initially suspicious of the payment order presented by Sinayobye Siméon on 17/08/2015. This suspicion led the employee who received it to request permission to process the payment. However, the permission was not granted because the telephone number provided by Mugwaneza Carine Sandrine to the Bank was not available at that moment. The fact that the Bank first called the account owner on the number she had given to the Bank demonstrates its acceptance of the duty to seek information when unusual activity is detected on the client's account. Furthermore, the Bank manager's decision to halt payments until the account holder admits to issuing the payment order serves as additional proof that the Bank acknowledges its duty of due diligence before processing payments. This behaviour

⁹ "Le client de la banque est, en principe, seul titulaire des pouvoirs sur son compte. Cela est plus particulièrement le cas pour les opérations débitrices, et découle du devoir de restitution... Il est donc demandé au banquier d'être vigilant et de s'assurer que les personnes réalisant des opérations au débit d'un compte sont bien en droit d'agir de la sorte." Reba Jérôme Lasserre Capdeville et les autres, *Droit bancaire*, Dalloz, Paris, 2021, p.392.

on the part of the Bank also contradicts its claim that it was not obliged to call Mugwaneza Carine Sandrine before making the payment, because if it had not been obliged to do so, it would not have called her or even after calling her, it would not have suspended the payment wait until she is available.

[36] The Court notes that BK Plc confirmed during the hearing before this Court that the telephone number given to it by Mugwaneza Carine Sandrine was 0788308017, and indeed this is the number on which the Bank first called her, after failing to reach her, the Bank instructed that the payment order await confirmation from the person who issued it. In addition, all letters sent by BK Plc to Mugwaneza Carine Sandrine state that her telephone number is 0788308017. The Bank does not explain where it obtained the number 0788867979 written on the payment order. Even in professional practice, it was not appropriate for the Bank to accept the number 0785978939 from Sinayobye Siméon, who came to collect the payment order. The Bank then assumes that the number belongs to Mugwaneza Carine Sandrine, whereas she has another number that she provided to the Bank for contact in case she was needed.

[37] The Court finds that BK Plc has not proved that the telephone number 0785978939, which it claims to have called last before deciding to process the payment, is registered to Mugwaneza Carine Sandrine, nor has it proved that she would have given it as an alternative telephone number if she was not available at 0788308017. Therefore, the fact that an unknown person was called to confirm the withdrawal of these dollars should be considered as the Bank accepting the withdrawal of these dollars without the authorisation of the account holder, whereas the Bank had already stated that the withdrawal would only take place if the person who gave the order was available on the telephone number she had given to the Bank to authorise the payment.

[38] The Court finds that the bank statement of Mugwaneza Carine Sandrine on the dollar account no. 00040-0294342-77 indicates that until 17/08/2015, when the payment order in question was delivered to BK Plc, the largest amount of dollars she had withdrawn from her account was USD 1,629, which she withdrew herself on 28/01/2015. Therefore, the fact that USD 11,500 was withdrawn from the account based on the payment order given to an individual was an unusual activity for that account, which would have required the Bank to be more cautious before making the payment.

[39] The Court finds that, in line with the Commercial High Court's ruling in paragraph 26 of the judgment under review, Mugwaneza Carine Sandrine had a duty to properly safeguard the payment order book and to promptly notify the bank or other authorities in the event of the payment order being stolen. However, this does not imply that the Bank is absolved of its professional responsibility to conduct thorough checks before executing a payment, especially considering its claim of being diligent before processing payments. As mentioned earlier, the Bank has failed to substantiate what alleviated its suspicion.

[40] The Court finds that the client's obligation to safeguard the payment order booklet and promptly notify the Bank and other authorities of its theft does not entirely eliminate the risk of theft. In some instances, the client might only become aware of the theft upon receiving information about a withdrawal from their account. Account information may be delayed for various reasons, such as customers not utilizing technology, encountering delays in accessing

information, or discovering it only upon visiting the bank. Even those who use technology may face challenges, and technological issues can result in delayed or missed information.

[41] The Court finds that the clients' responsibility to prevent the improper use of their account initially entails proper management of documents or information received from the bank. Simultaneously, this responsibility endows the bank with the discretion to determine the level at which the client's funds are accessed. This discretion provides numerous avenues for preventive measures. Essentially, if a bank is absolved of its duty of prudence, it could expose many customer accounts to risks. The Court recognizes that the duty of discretion is the rationale behind banks providing customers with an affidavit form for forgery. This form allows the bank to trace and recover funds if the customer's money is stolen using forged documents¹⁰.

[42] In the case of *I & M Bank Rwanda Ltd v. Coffee Business Center (CBC) Ltd*, this Court determined that "the consequences of a failure to comply with the duty of prudence by the bank involve the return of the owner's money, particularly if it has been given to the wrong person, especially a fraudster. This is because the payment is considered to occur when the money is taken by the rightful owner. However, the Court also noted that unless the bank can provide evidence of the client's wrongdoing ... or demonstrate that the error occurred due to extraordinary reasons, the responsibility for returning the money lies with the bank".¹¹ In the case of *Sebahizi Jules against Equity Bank Rwanda Ltd*, as mentioned above, the Court found that "the fact that Sebahizi Jules had no role in the withdrawal of 30,000 USD from his account... and its transfer to Singapore, shows that Equity Bank Rwanda Ltd was not diligent in doing so. Therefore, the bank has to return to him the entire amount withdrawn."¹²

[43] The role of the bank has long been reiterated by the courts of other countries, as seen in the case of *Central Nat. Bank of Richmond v. First & Merchants Nat. Bank*. The Supreme Court of the State of Virginia in the United States of America stated that the general principle is that a person's money deposited in a bank should not be touched without the owner's permission. If the bank releases it to an unauthorized person, that does not concern the owner of the money, and it is considered "as if the money has not left his account ; in that case, the bank bears full responsibility."¹³ This position was also upheld in the case of *Cairo Banking Co. v. West et al.*, where the Supreme Court of Georgia ruled that when a customer deposits money in a bank, it is assumed that the bank is indebted to him. In order to be discharged from that liability, the bank must refund the depositor, and the bank's liability is not removed by its acceptance of cashing a forged cheque.¹⁴

¹⁰ See Judgment *Stokes v. Commonwealth*, 49 Va. App. 401 (2007).

¹¹ See judgment RCOMA 0171/12/CS rendered by the Supreme Court on 03/01/2014, paragraph 17.

¹² See judgment RS/INJUST/RCOM 00001/2017/SC rendered by the Supreme Court on 26/01/2018, paragraph 27.

¹³ "The general rule is conceded that a depositor's funds in a bank are unaffected by any unauthorized payment. If a bank pays out money to the holder of a check, upon which the name of its depositor is forged, it is simply no payment as between the bank and the depositor ; the account between the bank and the depositor and the legal liability of the bank remain just the same as if the pretended payment had not been made. The pretended payment does not diminish the funds of the depositor...In the payment by a bank of a forged check, it acts at its own peril, and not that of the depositor". See judgment *Central Nat. Bank of Richmond v. First & Merchants Nat. Bank...*, 171 Va. 289 (1938).

¹⁴ "Where a person deposits money in a bank on general deposit, the relation of debtor of the bank to the depositor as creditor immediately arises, and in order to discharge itself from this liability the bank must pay the depositor. The liability can not be discharged by accepting a forged check drawn in the name of the depositor against the bank." See Judgment *Cairo Banking Co. v. West*, 187 Ga. 666 (1939).

[44] In the case of *Sheila Michelle Stokes v. Commonwealth of Virginia*, the Virginia Court of Appeal, relying on the precedent set by the case of *Central Nat. Bank of Richmond*, found that the current practice of banks is that when a fake cheque is paid, the bank then must correct the unauthorized withdrawal of funds by debiting its own funds and crediting the depositor's account.¹⁵

[45] The Court stated that:

- i. Where a fraudulent transaction has occurred at a bank, that transaction does not affect the depositor, for the purposes of identifying the victim of a larceny based on the fraudulent transaction, because the bank did not possess the authority to disburse the funds from that depositor's account.¹⁶
- ii. A bank, in paying a forged check, must be considered as making the payment out of its own funds, and it has to pursue the person who received payment.¹⁷

[46] The issue of a bank making a payment to the wrong person and the subsequent obligation to refund the customer has been reiterated by Jérôme Lassere Capdeville and his colleagues. They state that it is a principle that *a bank has to efficiently respond to the client's request. When it mistakenly pays or sends money to the wrong person, the bank must return the money to the account holder, and then it will be the responsibility of the bank to pursue the person who received the payment.*¹⁸

[47] In light of the foregoing elucidations, the Court finds that BK Plc failed to comply with its duty of due diligence when it withdrew 11,500 USD from Mugwaneza Carine Sandrine's account and paid it to Sinayobye Siméon. Therefore, BK Plc must return that amount and pursue the person who received the payment.

II.2. Whether Mugwaneza Carine Sandrine should be awarded the interest arising from 11,500 USD calculated at the rate 18% per annum

[48] Mugwaneza Carine Sandrine and her Counsel Bizumuremyi Isaac allege that, in respect of 11,500 USD, she was awarded 15% interest in judgment RCOM 00860/2016/TC/NYGE, whereas commercial banks normally charge 18% interest, and she requests this Court to correct the error and therefore the interest awarded to her should be calculated at the rate used by regular banks

¹⁵ “Appellant argues, ...that once a depositor's account is debited, the funds automatically belong to the depositor We disagree with this argument, as it requires this Court to ignore modern banking practice and the debtor/creditor relationship ...At present, a bank generally would debit the depositor's account when it pays the person presenting the forged check. The bank then must correct the unauthorized withdrawal of funds by debiting its own funds and crediting the depositor's account to fully make it whole...” See judgment *Stokes v. Commonwealth*, 49 Va. App. 401 (2007).

¹⁶ “Where a fraudulent transaction has occurred at a bank, that transaction does not affect the depositor, for the purposes of identifying the victim of a larceny based on the fraudulent transaction, because the bank did not possess the authority to disburse the funds from that depositor's account.”

¹⁷ “A bank, in paying a forged check, must be considered as making the payment out of its own funds, for the purposes of identifying the bank as the victim of the larceny that arises from the payment on the forged check.”

¹⁸ “Tout d’abord il est acquis que (le) banquier doit correctement passer les opérations souhaitées par son client. Ainsi, en cas de paiements ou de virements opérés par erreur au bénéfice d’un tiers, l’obligation de restitution implique que le banquier reste tenu de restituer la chose reçue à son véritable bénéficiaire. Il devra alors procéder au remboursement du client victime de l’erreur et, le plus souvent, prétendre à un remboursement par le tiers.” See Jérôme Lassere Capdeville et les autres, *Droit bancaire*, Dalloz, Paris, 2021, p.388.

with effect from 12/08/2015. She states that the interest due to her for the past seven years and four and a half months' amounts to USD 15,266.25, but that she requests the Court to calculate this interest until the judgment is delivered.

[49] Counsel Rutagengwa Jean-Damascène, representing BK Plc, argues that Mugwaneza Carine Sandrine should be awarded no interest. This is based on the assertion that she failed in her duty to safeguard the payment order booklet issued to her. According to the Counsel, if she had ensured the security of her booklet and signature, the unauthorized withdrawal of dollars would not have occurred. Therefore, she should not benefit from her own failures.

DETERMINATION OF THE COURT

[50] Article 137 of the Law n° 45/2011 of 25/11/2011 governing contracts reads 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”.

[51] Article 94, paragraphs two and four, of the Regulation N° 55/2022 of 27/10/2022 relating to financial service consumer protection on Compensation to the financial service consumer reads that: *“In case of negligence by the financial service provider that causes monetary loss to the financial service consumer, the latter shall have the right to claim for compensation on the loss. The computation of the compensation shall be based on the following factors:*

- amount lost due to negligence;
- opportunity cost lost due the negligence;
- damages paid by the financial service consumer if any.

In any case, the compensation rate cannot go below the average lending rate as published by the Supervisory Authority.

[52] In the case of Sebahizi Jules vs. Equity Bank Rwanda Ltd¹⁹, the Court found that the bank debited money from Sebahizi Jules' account without his authorization. This action caused him financial loss, as he was unable to use the funds for his family's needs or leave them in the bank to accrue interest. The same issue is present in the current case involving the bank's payment of USD 11,500 to Sinayobye Siméon without the authorization of the account holder, Mugwaneza Carine Sandrine. This unauthorized transaction deprived Mugwaneza Carine Sandrine of the opportunity to use the funds or leave them in the Bank to earn interest.

[53] In the case of Sebahizi Jules²⁰, the Court awarded compensation based on the average loan rate. This stance was recently reaffirmed in the case of Nsengiyumva Théoneste v. Ntagungira Jérôme et al., where the Court determined that Nsengiyumva Théoneste should receive compensation for the funds he had utilized to purchase the lost land. Additionally, interest was to

¹⁹ See Judgment RS/INJUST/RCOM 00001/2017/SC rendered by the Supreme Court on 26/01/2018, paragraphs 33 and 34.

²⁰ See judgment RS/INJUST/RCOM 00001/2017/SC rendered by the Supreme Court on 26/01/2018, paragraph 34.

be calculated at the rate of 8%, mirroring the interest charged by banks to customers who deposit money in their accounts with the intention of earning interest²¹.

[54] The Court finds however that the foregoing modality of calculating interest is the same one reiterated by the National Bank of Rwanda in the aforementioned Regulation providing that the the compensation rate cannot go below the average lending rate as published by the Supervisory Authority. The document entitled *Interest Rate Structure* published by the National Bnk of Rwanda on its website www.bnr.rw/browse-in/financial-market/money-marketinterest-rates/monthly-interest-rates, which was also reiterated by www.tradingeconomics.com/rwanda/interest-rate indicates that that the rate in Rwanda has reached 15.81%²²; therefore, this rate should also serve as the basis for computing the interests that BK Plc is obligated to pay to Mugwaneza Carine Sandrine.

[55] The Court, therefore, finds that BK Plc must pay to Mugwaneza Carine Sandrine an interest amounting to USD 11,500 x 15.81% from 27/08/2015, i.e., the day after the dollars were withdrawn from the account, until 31/03/2023, covering a period of seven years, seven months, and four days, equal to 2,734 days. This amount is calculated as follows :

$$11,500 \text{ USD} \times 15.81 \times 2,734 = 13.807,8 \text{ USD}$$

$$360 \times 100$$

[56] The Court finds that although the interest that BK Plc should pay to Mugwaneza Carine Sandrine amounts to 13,807.8 USD, these interests significantly exceed the 11,500 USD that BK Plc paid to Sinayobye Siméon due to carelessness. In the case of *Banque Populaire du Rwanda Plc v. Nyamasheke District*²³, this Court established that the interest rate for debt arrears should not be excessive. The same Court clarified that the determination of the interest rate on arrears aims to prevent this process from becoming a means of inappropriate enrichment for the beneficiary. Hence, the Court has the responsibility to establish a reasonable rate.

[57] In that case, this Court found that the appropriate rate of overdue interest is determined by the court in its discretion. The interest must not exceed what is necessary to repair the damage but must also be sufficient to impart a lesson so that the reasons given will not be repeated, confirming that the delayed interest must not exceed the amount of the debt to be paid.

[58] The Court finds that the interest on the principal debt ceases to be calculated when it equals the principal debt that remains unpaid. This principle is evident in other specific laws, such as Article 72, Section 4, of Law No. 031/2022 of 21/11/2022, governing Public procurement²⁴, Article 112, Section 2, of Law No. 47/2017 of 23/09/2017, governing the organisation of banking²⁵, and Article 59 of Law No. 25/2005 of 04/12/2005 on tax procedure as modified and

²¹ See judgment n° RS/INJUST/RC 00012/2021/SC rendered by the Supreme Court on 22/07/2022, paragraph 50.

²² Accessed on 29/03/2023

²³ See judgment RS/INJUST/RCOM 00006/2022/SC rendered by the Supreme Court on 27/01/2023, paragraph 52.

²⁴ « The late payment interests referred to in Paragraphs 2 and 3 of this Article cannot exceed the amount of the security furnished ».

²⁵ Article 112 of the Law No. 47/2017 of 23/09/2017, governing the organisation of banking reads that:« A bank is limited in what it may recover from a debtor with respect to a nonperforming loan to the following maximum amount:

complemented to date²⁶. Each law, as it pertains, specifies that the interest may not exceed the amount of the security issued in relation to public procurement, nor does it exceed the amount of arrears in respect of bank loans, or exceed the amount of tax payable in respect of the overdue taxes.

[59] In light of the foregoing elucidations, the Court finds that BK Plc has to pay interest amounting to 11,500 USD to Mugwaneza Carine Sandrine.

II.3. Whether BK Plc has to pay to Mugwaneza Carine Sandrine 310,000 Frw withdrawn from her account plus interests arising from that amount calculated at the rate of 18%

[60] Mugwaneza Carine Sandrine and her legal Counsel Bizumuremyi Isaac, claim that on 12/08/2015, Twajeneza Olivier withdrew 310,000 Frw from her account (account no. 00051-0609850-07) due to the negligence of BK Ltd or with the involvement of the Bank, without the authorization of Mugwaneza Carine Sandrine. Therefore, the Court should order to the Bank to repay the amount plus interest calculated at 18%, amounting to 418,500 Frw, making a total of 728,500 Frw (310,000 Frw + 418,500 Frw). They assert that Mugwaneza Carine Sandrine has filed a claim for this money but has not received it.

[61] Counsel Rutagengwa Jean-Damascène, representing BK Plc, submits that in the agreement Mugwaneza Carine Sandrine entered into with the Bank, each party had a duty to comply with. The Bank contends that it fulfilled its obligation by checking the quality of the payment order documents used and verifying the signature of Mugwaneza Carine Sandrine. Therefore, the Bank asserts that it should not be held liable for the claimed money because Mugwaneza Carine Sandrine failed in her responsibility to take care of the payment order booklet given to her by the Bank. As a result, she should bear full responsibility for what happened to her account.

DETERMINATION OF THE COURT

[62] The Court finds that, as per the documents in the case file, the issue relating to 310,000 Frw was considered by the Nyarugenge Commercial Court. In paragraph 17 of the judgment RC 00860/2016/TC/NYGE rendered on 21/10/2016, the Court found that *"with regard to the 310,000 Frw alleged to have been withdrawn by Twajeneza Olivier on Mugwaneza Carine Sandrine's account using a forged cheque, there is no evidence to prove it because the cheque n° 00051-0609850-07/Rwf bears her signature. She does not prove that the cheque was forged, nor does she*

1° the unpaid balance of the principal when the loan becomes nonperforming; 2° interests, in accordance with the contract between the debtor and a bank, not exceeding the principal owed when the loan becomes nonperforming; 3° expenses incurred in the recovery of any amounts owed by the debtor ». See also article 8 of the Regulation n° 12/2017 of 23/11/2017 on credit classification and provisioning stipulating that : « A bank shall be limited in what it may recover from a debtor with respect to a non-performing loan to the following maximum amount : a) the unpaid balance of the principal when the loan becomes written off; b) unpaid arrear interests, computed in accordance with the contract between the debtor and a bank, not exceeding the principal owed when the loan becomes written off; and c) expenses incurred in the recovery of any amounts owed by the debtor ».

²⁶ "Interest accrues can not exceed one hundred percent (100%) of the amount of tax". See Article 59 of the Law n° 25/2005 of 04/12/2005 on tax procedure (This is article 12 of Law No. 25/2005 of 04/12/2005 on tax procedure modifying and complementing Law n° 25/2005 of 04/12/2005 on tax procedure).

prove that the signature on it is not hers. Therefore, the court has no basis to order that the money be returned to her."

[63] The Court finds that there is no indication in the case file before the Commercial High Court that Mugwaneza Carine Sandrine has appealed against the decision mentioned in the previous paragraph. However, article 55 of the Law n° 30/2018 of 02/06/2018 determining the jurisdiction of courts provides that *any party entitled to ordinary and extraordinary remedies but that fails to assert his/her right within the time limit provided by law, is not allowed to apply for review of a case he/she lost because of injustice*. When analysing this article in various cases including the case of Ngizweninshuti Albert v. na Muhima Giovani, this Court found that, any party who is not satisfied with a court ruling but fails to apply for the correction of alleged errors at the level of appeal or lodge a cross-appeal, even when entitled to such a procedure, deprives themselves of the right to appeal. Consequently, they cannot resort to a review of the case due to injustice in order to seek the reexamination of that article, as it is against the law²⁷.

[64] On the basis of what has been explained above, the Court finds that the fact that Mugwaneza Carine Sandrine did not appeal against the decision of the Nyarugenge Commercial Court on the matter relating to the 310,000 Frw, although she had the right to do so, means that she was satisfied with the decision of that court on this matter, so that there is no way in which she can claim to have suffered injustice in this matter, this is why her request for a reexamination of the said article at this level should not be granted.

II.4. Determining the basis for the compensation claimed in this case

[65] Mugwaneza Carine Sandrine and Counsel Bizumuremyi Isaac, assisting her, request this Court to order to BK Plc to pay Mugwaneza Carine Sandrine 2,000,000 Frw as moral damages for spending four years pursuing her money in BK Plc, in the courts, and at the Ombudsman's level. Additionally, they seek 4,000,000 Frw for procedural fees, 1,500,000 Frw for counsel fees at this level, and reimbursement of the 2,500,000 Frw she paid for counsel fees in previous courts.

[66] Counsel Rutagengwa Jean-Damascène, representing BK Plc, submits that BK Plc should not pay any compensation to Mugwaneza Carine Sandrine because she is the one who initiated the lawsuits against herself and the Bank. Therefore, he argues that she should pay 2,000,000 Frw as compensation for involving the Bank in unnecessary lawsuits, 500,000 Frw for procedural fees, and 1,000,000 Frw for counsel fees, totaling 3,500,000 Frw.

[67] Mugwaneza Carine Sandrine and Counsel Bizumuremyi Isaac, assisting her, submit that BK Plc deserves no compensation because if it had not failed to perform its duties, there would have been no lawsuits.

DETERMINATION OF THE COURT

²⁷ See judgment RS/INJUST/RC 00024/2018/SC rendered by the Supreme Court on 21/02/2020, paragraph 19. See also judgment RS/INJUST/RC 00007/2018/SC for Nditiribambe Samuel against Gatera Jason rendered by the Supreme Court on 13/03/2020 as well as judgment RS/INJUST/RC 00021/2022/SC *Mukagatare Régine et al. Against SANLAM AG Plc* rendered by the Supreme Court on 17/03/2022.

[68] With regard to the compensation of 2,000,000 Frw requested by Mugwaneza Carine Sandrine, the Court finds that the negligent act of BK Plc, withdrawing USD 11,500 from her account and paying that amount to Sinayobye Siméon, caused damage to Mugwaneza Carine Sandrine. She has been distressed since 2015, attempting to find a way to recover those dollars for use or income generation. Therefore, at the discretion of the Court, she is awarded the compensation of 1,000,000 Frw.

[69] As for the counsel and procedural fees requested by Mugwaneza Carine Sandrine and BK Plc, the Court finds that neither of them deserves such compensation because each of them has something to lose and to gain in this case.

[70] The Court also finds in the case file that there is no evidence that Mugwaneza Carine Sandrine has paid 2,500,000 Frw for counsel fees at both the Nyarugenge Commercial Court and the Commercial High Court. Therefore, the Court has no basis to order that this amount should be the one to be returned to her, as she requested.

III. DECISION OF THE COURT

[71] Holds that the application filed by Mugwaneza Carine Sandrine for the review of the judgment RCOMA 00642/2016/CHC/HCC rendered by the Commercial High Court on 06/01/2017 for being vitiated by injustice, has merit in part ;

[72] Decides that the ruling in the judgment RCOMA 00642/2016/CHC/HCC rendered by the Commercial High Court on 06/01/2017, is reversed ;

[73] Orders to Bank of Kigali Plc to pay to Mugwaneza Carine Sandrine 11,500 USD withdrawn from her dollar account n° 00040-0294342-77 plus interests amounting to 11,500 USD, all totaling to 23,000 USD ;

[74] Orders to Bank of Kigali Plc to pay to Mugwaneza Carine Sandrine 1,000,000 Frw as moral damages.