

Initiatives for Peace and Human Rights (iPeace)
MOOT COURT CASE
CONTRACT LAW

MOOT COURT CASE - CONTRACT LAW

Rwanda Perfect Builders Ltd v. Kigali Executive Hotel

I. FACTS OF THE CASE

1. Rwanda Perfect Builders Ltd (RPB) is a very successful civil engineering company with more than 50 years of experience in designing and constructing luxury hotels. RPB is incorporated in Rwanda and has its headquarters and technical laboratory in a Campus of log buildings sitting on the banks of the Nyabarongo River just South of Ruyenzi – a town that in the 1900s named itself for the then sitting Rwanda’s Vice-President but then later changed its spelling after its namesake left office. RPB has stores and branches in different cities, including Huye, Rubavu, Kigali, and Ruyenzi.
2. In addition to designing and building, RPB makes some construction materials and imports home furniture and appliances from Turkey. Its Turkish counterpart is Istanbul Shoppers, a wholesale company specialized in construction materials and hotel furniture.
3. On 15 February 2019, Kigali Executive Hotel (KEH) wins a tender from the Government of Rwanda to host high-profile guests who will attend the Commonwealth Heads of Government Summit to be held in Kigali on 22-27 June 2020.
4. The contract signed between KEH and the Government of Rwanda is worth 850 million Rwandan Francs. KEH expects to make a net benefit of 150 million Rwandan francs.
5. To accommodate these high-profile guests, the Government of Rwanda ordered KEH to upgrade its facilities with the most recent high-tech furniture and appliances to reflect Rwanda’s vision to be Africa’s leading quality Meetings, Incentives, Conferences and Exhibition (MICE) destination.
6. To make sure that KEH will not use low-quality products and services, the Government of Rwanda made it a term of their agreement that KEH has to use products from and hire services of RPB to upgrade its facilities. But this requirement was not communicated to RPB.
7. On 25 February 2019 at 10:32 am KEH sends an email to RPB requesting for a quotation for an in-depth refurbishment of 220 rooms and the construction of 5 ultra-modern conference halls with an 1,800-seat capacity, each. Among other things, KEH’s Terms of References insisted on the quality of Air Conditioning System, carpeting, bathroom equipment as well as electronics.
8. RPB replies two (2) days later by emailing a pro-forma invoice also referring to “in-depth refurbishment of 220 rooms and the construction of 5 ultra-modern conference halls with an 1,800-seat capacity, each” and an accompanying contract document. RPB requests KEH to sign the contract document and send it by post.

9. Article 8 of the contract contains a clause where RPB promises to finish all the works by the 15 December 2019 so as to give enough time to KEH to test the facility before their Commonwealth guests arrive. The total cost of works is 450 million Rwandan francs.
10. Article 21 of the contract stipulates that “To avoid long and costly courts procedures, parties agree that damages amounting to two billion Rwandan francs (2,000,000,000 Rwf) would be paid to KEH in case RPB would not be able to complete the works by the agreed deadline, except in case of force majeure”.
11. In signing the contract document, however, Mr. Kamanzi – the Chief Executive Officer at KEH - makes a notation in the margin of it, next to a clause titled “Description of Goods”. In the text of the contract document, that clause states that the air conditioning system “shall be of adequate fitness for normal use”. In the margin next to that clause, Mr. Kamanzi writes in “for Rwanda use”.
12. The contract document is posted on 28 February 2019 at 12:30 pm a time when all RPB staff members are known to be outside of their offices for lunch break. This break runs from 12:00 to 13:00. All RPB staff members including senior managers are required to share lunch in a beautiful garden built by the company. This practice is said to be part of the company’s “ubusabane” culture in place since the foundation of the company in 1960s.
13. During the lunch discussions, Ms. Mucuruzi, RPB’s Sales and Commercial Manager, informs Mrs. Umuhire the company’s Chief Operations Officer, about their “deal of the year”. It happens that Mrs. Umuhire had just spent some time in Turkey negotiating new prices and delivery options with Istanbul Shoppers. Thus, she was not aware of the negotiations between RPB and KEH. Although she was copied in different emails, she could not access her emails from Turkey.
14. After being aware of the terms of the contract, Mrs. Umuhire tells Ms. Mucuruzi that based on the new tariffs agreed on with Istanbul Shoppers the proposed cost was extremely low and the company would work on loss. He suggested that, to be profitable, the minimum cost for such a project should be 550 million Rwandan francs.
15. Immediately after lunch break, Mucuruzi makes a phone call to Kamanzi at 13:16. During their conversation, she says that the quotation in her email of 27th February 2019 was no longer available for acceptance. She explains that the cost of works was underestimated and suggests that the real cost is rather 600 million. She concludes the conversation saying that “anyway, it is take-it or leave-it”.
16. In the meantime, the contract document sent by KEH arrives the same day at 16:20. It is received by the company’s Administrative Assistant who immediately calls Mucuruzi to inform her about the arrival of the so-much awaited courier. Mucuruzi asks her to file it in a drawer.
17. Few hours after the phone call, having discussed with his colleagues about this new development, Mr. Kamanzi sends a WhatsApp message to Mucuruzi saying “No problem, we will do it your way”. The message was received and read by Mucuruzi the same day around 16:30 in the afternoon. She also responds: “Great. We’ll start works in a couple of days. Thanks for your understanding”.

18. Since sending the contract document three months ago, HEK has had no further contact with, or communication from, RPB office. Instead, they noticed engineers and workers wearing RPB logos mounting scaffolds and conducting many activities on their sites. Apparently, everything was set and works were in very good progress.
19. On 15 June 2019, the site manager even tells Kamanzi, who was asking about the work progress, that “At this pace, we could deliver your hotel and facilities earlier than the agreed deadline”. This prompted KEH to start advertising their property for early occupancy before the agreed deadline.
20. On 30 June 2019, Initiatives for Peace and Human Rights (iPeace) a Rwanda-based NGO signs an agreement worth 50 million Rwanda Francs with KEH to host its 7th Great Lakes Regional Training Programme in International Humanitarian Law and Human Rights to be held in Kigali on 8-14 December 2019.
21. Unfortunately, in August 2019 works’ progress starts falling back. It seems that RPB made some risky investments in 2018. They were expecting high returns so that they could complete on time KEH’s works. But things did not go as they had planned.
22. In addition to financial difficulties, a ship that was transporting materials to finalize the conference halls from Turkey was denied access to the Suez Canal due to a conflict between Ankara and Cairo over political turmoil in the Middle East. The shipping company informs RPB that the only option remains passing by Cape of Good Hope through the Atlantic Ocean in West Africa to deliver the cargo at Dar-es-salaam port. This would take six (6) more weeks and they would need to triple the transport cost they previously agreed as the previous delivery date and cost were based on the Red Sea route.
23. Given the situation, Mrs. Umuhire calls for an urgent meeting in early September 2019 with KEH to find the most convenient solutions for both parties. During the meeting, RPB exposes all the challenges they are going through and clearly tells KEH representatives that they would not be able to complete works on time as previously agreed unless they accept to add extra 120 million Rwandan francs. KEH agrees to add this extra amount to the contract initial amount because they don’t want to default vis-à-vis the Government of Rwanda. The minutes of this meeting are signed by representatives of both parties.
24. Based on the promises made in this meeting, RPB decides to bring to Rwanda fifty (50) experienced Turkish workers specialized in the finishing of luxury buildings in a bid to catch up the delay caused by the Suez Canal issue. Since they did not have enough money, they apply for an emergency business loan of 80 million Rwandan Francs to the Equity Bank, which they are granted at the highest interest rate of 30%.
25. On 30 November 2019, RPB sends an email inviting KEH to take possession of its refurbished facilities and conference halls as agreed. The conference halls were so stunning and modern that the representatives of the Government in that handover ceremony could not hide their satisfaction.
26. However, the inspection of the air conditioning system reveals that the used appliances do not meet some key safety and environment requirements prescribed in a new set of standards issued two months

ago by Rwanda Environment Management Authority (REMA). It is found that not only the installed Air Conditioning system requires lots of energy to function properly but also its greenhouse gas production is very high. For the Government of Rwanda, the use of such equipment for a high-level summit would seriously undermine the image of the country, which is a global champion in the fight against global warming. The government refuses to grant exploitation permit to KEH's facilities and threatens to take its guests to another hotel if nothing is done to fix this issue.

27. According to experts, it will cost 50 million to replace the non-complying features from the Air Conditioning System, and flying them from Turkey to Kigali. Shipping the new equipment is not an option given the ongoing crisis in the Middle East. RPB does the needful and in four (4) weeks the whole Air Conditioning System is changed to comply with REMA instructions.
28. It appears that there is no indication in the contract document (aside from Mr. Kamanzi's handwriting marginal note mentioned above) describing the Air Conditioning System in any more detail than "modern user-friendly air conditioning system". It also seems that the Air Conditioning System would have complied with Rwanda governmental requirements as they stood before the new safety standards were prescribed two months ago.
29. On 6th January 2020 KEH receives fully and completed works from RPB. On 12th February 2020, RPB sends an invoice of 770 million to KEH who refuses to pay. In a letter signed by the company attorney, KEH informs RPB that they might only pay 450 million as agreed in the contract they posted on 28 February 2019. In addition, KEH threatens to file a legal action against RPB in courts for breach of contract and to claim for the liquidated damage provided in article 21 of the contract.
30. Unhappy with this response, RPB decides to file a case against KEH for breach of contract. The hearing is scheduled before Nyarugenge Commercial Court on 20 February 2020. RPB wants the court:
 - (a) To order KEH to pay 600 million as the amount agreed in their contract
 - (b) To order KEH to pay 120 million they promised to pay based on their additional contract
 - (c) To declare unenforceable Art. 21 of their contract
 - (d) To order KEH to pay lawyers' fees and damages.

II. INSTRUCTIONS

1. Each team participating in the competition must prepare one memorial on behalf of the claimant and one on behalf of the respondent. **Content-wise**, while preparing the memorials, each competing team must consider, for each claim raised, the standing, admissibility, merits and remedies requested. In addition, the memorials should contain key arguments that indicate a clear understanding of the law and the facts. Key legal issues of the case must be pointed out, reference to appropriate laws and case law should be made to support the advanced arguments. **Format-wise**, the memorials

should be drafted in the following format: Font: *Times New Roman*; Font Size: 12; Margins: 2.54 cm; interlinear space: 1.5 and length: *between 3.000 and 6.000 words*.

2. Each team must be prepared to appear and plead before the Court on behalf of each party to the case: once as the applicant and once as the respondent. While pleading, each team must argue the issues in sequence (first issue, second issue, etc.).