
**ENFORCING CONTRACTS, THE
EXPERIENCE OF RWANDA**

**PRESENTED BY JUSTICE Emmanuel
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Kigali, 17th March 2011**

BACKGROUND

- A good institutional and legal framework is vital to building a trade and investment enabling environment and to facilitating a country's efforts to promote economic growth through, among others, the procedure, the time lines and the cost to enforce a business contract.

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- It is in that perspective that early after the 1994 genocide Rwanda recognized that it had to reform its commercial justice institutions and procedures.

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- As far as doing business in Rwanda is concerned, two major courts reforms keep the attention:

The creation of specialized commercial chambers and their replacement by the creation of commercial courts

1. A first attempt: Creation of specialized commercial chambers

- In May 2001 was created a ten members Rwanda Law Reform Commission with the mission to review all existing laws and courts rules and to recommend reforms to improve the efficiency of justice. New laws have been passed especially in 2004 with the particular innovation in the field of commercial litigations that 3 specialized commercial chambers were set up within the Provincial Courts of Butare, Ruhengeri and the City of Kigali (3 of the 12 provincial courts then existing).

- The 2004 law required that each specialized commercial chamber be composed of 1 professional judge and 2 lay judges, called “assessors.”

This system (with assessors) was new to Rwanda. It was inspired by the experience in some countries where assessors are independent and experienced businesspeople who volunteer to assist in ruling on commercial cases and they enrich the court with their technical understanding of *Doing Business*.

2. Specialized commercial chambers failure

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- For a number of reasons, particularly due to the lack of time to be devoted to sittings of those chambers and the hindrance resulting from the Rwandan frame of mind of reluctance to be involved in bodies having to take decisions against one's colleagues in business, the assessors of the commercial chambers never sat and the courts did not decide any commercial cases.

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- It was mainly for those reasons that the Organic Law No. 14/2006 dated 22/03/2006 modifying and complementing that baring No. 07/2004 dated 25/04/2004 relating to the Organization, Functioning and Judicial Competence was passed.

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- That law vested with the High Instance Courts of Huye, Musanze and Nyarugenge the commercial jurisdiction that was previously held by the commercial chambers.

3. The creation of separate commercial courts

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- The number of commercial litigations was increasing with the City of Kigali alone registering more than 1900 such litigations awaiting adjudication.

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- ◎ It was considered that commercial litigations have to be adjudicated with celerity by professionals sitting at specialized commercial courts.

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- An ad hoc Business Law Reform Cell which was created in October 2005 felt that it was necessary for the creation of those courts with suitably qualified personnel (judges, registrars and support staff) and that appeals against decisions taken at first instance be made to the Commercial High Court rather than the High Court of the Republic, and this, with a view to avoid increasing the load of backlog of cases pending since several years before that court.

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- In order to ensure the perception of well dispensed justice, the Rwandan Judiciary could no longer condone any inability to clear the existing backlog of cases, especially concerning commercial matters.

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- In the absence of urgent appropriate measures, delays in the adjudication of commercial cases would have even in the short run impacted negatively on the economic development by discouraging both local and foreign investors.

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- ⦿ Those major concerns led to the adoption of the **Organic Law No. 59/2007** dated **16/12/2007** relating to **the creation, organization, functioning and jurisdiction of commercial courts**, which law came into force on the 1st of March 2008 (J.O No 5 of 01/03/2008).

**4. The need to define
commercial matters falling
within commercial courts
jurisdiction**

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- ◉ Under article 3 of law 59/2007, commercial matters are defined as under:

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- disputes arising from commercial contracts or commercial activities between persons or business entities;
 - disputes arising out of the use of negotiable instruments;
 - disputes relating to transactions between persons and financial institutions;

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- disputes related to liquidation, dissolution and recovery of limping business firms;
 - cases related to insurance litigation but not including compensation claims arising out of road accidents by litigants who have no contract with the insurance firms;
 - claims related to fiscal disputes;
 - claims related to transport litigation;

○ Any dispute that may arise between persons who own or manage registered entities and commercial institutions and these include:

- a. members of the Board of directors;
- b. directors;
- c. shareholders;
- d. auditors;
- e. liquidators of a dissolved firm;
- f. managers of the property of a bankrupt business firm;

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- cases arising from bankruptcy;
 - cases related to intellectual property including trade marks;
 - cases related to registration and deregistration of business;

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- ① Cases related to appointment or removal of auditors responsible for auditing the books and accounts of a firm;
 - ① Cases related to competition and consumer protection.

**5. Ratione loci jurisdiction:
3 commercial courts and 1
CHC**

I. The Commercial Court

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- ① **The Commercial Court of Huye (Seat at HUYE, Southern Province) with jurisdiction over 10 districts, namely, Huye, Gisagara, Nyanza, Muhanga, Kamonyi, Ruhango, Nyamagabe, Nyaruguru, Rusizi and Nyamasheke.**

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- **The Commercial Court of Musanze (Seat at Musanze, Northern Province)** with jurisdiction over 8 districts, namely, Musanze, Burera, Gakenke, Rubavu, Ngororero, Nyabihu, Katongi and Rutsiro.

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- **The Commercial Court of Nyarugenge (Seat in the City of Kigali)** with jurisdiction over 12 districts, namely, Nyarugenge, Kicukiro, Gasabo, Bugesera, Ngoma, Kayonza, Kirehe, Rwamagana, Gicumbi, Rulindo, Nyagatare and Gatsibo.

II. The Commercial High Court

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- It is both a court of first instance and an appeal court. It has jurisdiction over the whole territory of the Republic of Rwanda and its seat is located in the City of Kigali.

6. Ratione materiae Jurisdiction

I. The Commercial Courts

The Commercial Courts are vested with jurisdiction to adjudicate in commercial cases where the claim does not exceed the prescribed amount of 20.000.000 frw (around 33,500 USD) and non-monetary commercial matters.

II. The Commercial High Court

- As a court of first instance it is empowered to adjudicate upon commercial cases where the claim exceeds the prescribed amount of 20.000.000 Frw.
- In the exercise of appellate jurisdiction, it hears appeals from decisions of the three commercial courts.

N:B: A right of appeal lies from all decisions of the Commercial High Court before the Supreme Court.

7. Procedure before commercial courts

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- Article 8 of Law No. 45/2007 of the 11/10/2007 modifying and complementing Law No 18/2004 relating to civil, commercial, social and administrative procedure (J.O No. 5 dated 01/03/2008) has made provisions for the entirely new procedure of **Preliminary Hearing** in the justice system of Rwanda.

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- The **Preliminary Hearing** is meant to clear all procedural hurdles that may delay proceedings and the adjudication of a commercial case.

● It is meant amongst other things to facilitate and ensure the following:

- the exchange of pleadings between the parties within the prescribed time limit,
- the communication of evidence the parties intend to rely upon to substantiate their respective case,
- the disposal of any procedural point of law before the case is taken on the merit
- the possibility of referring the parties to appropriate experts to resolve their dispute.

○ There is another novelty linked with the **Preliminary Hearing** which is the possibility of disposing of a case at that stage without a hearing on the merit in following way:

- by the parties coming to an agreement which is homologated by the Judge
- by the Judge giving with the agreement of the parties a judgment based solely on pleadings and documents exchanged.

8. Strategy and conduct of proceedings

**8.1. Considerations taken into
account and means available
in the conduct of commercial
cases**

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- As pointed out earlier, one of the principal reasons for the law reforms that led to the creation of specialized commercial courts is celerity in the conduct and adjudication of commercial litigations.

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- ⦿ This imperative does not prevail in Rwanda only as it is a major concern in many other countries also.

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- In fact a number of countries have adopted means, mechanisms and practices other than traditional trials, commonly known as Alternative Dispute Resolution (ADR), for the resolution of commercial litigations and disputes arising out of business transactions.

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- In order to be in line with the current international trend, the Rwandan legislator has in the laws relating to the jurisdiction and procedure of commercial courts provided with similar means and mechanisms of alternative dispute resolution.

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- It is to be noted in that respect that the law allows the Judge in appropriate cases to refer the parties to certain specific means of resolving their dispute before submitting the case to trial on the merit.

8.2 Strategy in the conduct of commercial cases

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- It is thus permissible at this juncture to apprise potential parties to commercial cases and their counsel that it would be the main strategy of commercial courts to ensure that cases are adjudicated within the least possible delay.

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- For that purpose the courts will refuse to tolerate unacceptable and undue delay in putting a case into shape and tactics tending to lengthen unnecessarily a trial.

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- The commercial courts will also encourage parties in appropriate cases to turn towards modes of dispute resolution other than a full fledge trial in the conduct of their cases

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- For all this to work there need to be a change in the prevailing frame of mind and certain objectionable habits in certain quarters in relation to the manner of conducting cases.

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- Habits like the use of delaying tactics and recourse to avoidable adjournments, very often *sine die*, which has up to now caused unwarranted and undue delay in the disposal of commercial cases undoubtedly prejudicial to business and economic development by the delays they cause should be abandoned.

9. SELF ASSESSMENT OF THE WORK DONE BY COMMERCIAL COURTS

**9.1. The starting point as at
15th May 2008**

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- The commercial courts have become operational since 15th May 2008 and as at that date the number of pending commercial cases received from the ordinary courts stood as follows:

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- a. **The Commercial High Court:** 551 cases that were pending at the High Court of the Republic and the Court of High Instance of Nyarugenge.

b. The Commercial Court of Nyarugenge:
some 2041 commercial cases emanating from
the Court of High Instance of Nyarugenge.

c. The Commercial Court of Huye: 463 cases.

d. The Commercial Court of Musanze: 278 cases.

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- ⦿ These figures show that the commercial courts have started with the significant backlog of 3,333 cases, the majority of which to be found in the City of Kigali.

9.2. The achievements as at 28 February 2011

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- Total number of cases before commercial courts: $3,333 + 6,489 = 9,822$
 - Disposed off cases : 8.526
 - Pending cases remaining: 1.296

Illustrating table

(15 May 2008 – 28 February 2011)

	Backlog cases	New cases	Total received cases	Cases disposed off	Total pending cases
CHC	551	1.755	2.306 (23%)	1.415 (61%)	891 (69%)
CC MUSANZE	278	999	1.277 (13%)	1.226 (96%)	51 (4%)
CC HUYE	463	1.081	1.544 (16%)	1.502 (97%)	42 (3%)
CC N'YGE	2.041	2.654	4.695 (48%)	4.383 (93%)	312 (24%)
TOTAL	3.333	6.489	9.822	8.526 (87%)	1.296 (13%)

**General assessment of time,
procedure and cost to have a
contract enforced:**

Time and procedure indicators:

- 50 days in average to have a judgement delivered within commercial courts other than in Nyarugenge Commercial Court

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- 7 months in average within Nyarugenge Commercial Court and the Commercial High Court. This time should be reduced up to 2 months maximum.

Cost indicator:

- Unlike other specialized commercial courts, Rwanda's commercial courts do not fund themselves by charging higher court fees than the ordinary courts.

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- The advance fees to file a new case is 6,000 RWF (10 USD) before the Commercial High Court and 4,000 RWF (7 USD) before the lower commercial courts and once the claimant wins the case he/she is refunded this fees by the court and the loser party is charged with the adjusted court fees which is generally less than 100 USD.

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- Even though each party agrees freely with his/her lawyer about the fees, it is worth note that the winner has always the possibility to claim their refunding by the looser as damages if duly justified. And at the end of the day, it is only the loosing party who endures all the court fees, including a proportional right of 4% of the court awarded amounts which goes in the Public Treasure.

9.3. Challenges and the way forward

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- Given the development of Information and Communication Technology (ICT), there is a real need to set up electronic mechanisms which are likely to reduce time and procedures involved in commercial litigation, so the following case management mechanisms should be introduced:

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1. Electronic filing, immediate availability of court records on proceedings to litigants through computer terminals in courts.
 2. Allowing parties to file their petitions electronically.
 3. Introduction of text messages for notification.

4. Electronic record keeping. All the decided cases to be scanned and documented electronically.

5. Computer system of tracking deadlines and judges to justify the postponement of court hearings

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- As far as the issue of cost is concerned, although the court fees in Rwanda may be estimated as being not too high, it may be thought a way to more reduce them by encouraging litigants to use ADR such as arbitration and mediation.

10. Conclusion

- From the experience of the Rwandan commercial courts, the topic on “enforcing contracts” has looked at the genesis and functioning of the existing institutional and procedural framework that enter in play to have a business contract enforced in due time, with reasonable cost and by following a clearly defined procedure. However, as the business environment is always evolving and that new challenges go hand in hand with new development, the institutional and procedural reforms undertaken by Rwanda are still continuing in order to provide a better business environment. This is made possible by peer to peer sharing of experience such as the one that our country has been honored to host now.

- Therefore, the Rwandan commercial courts are strongly committed to ensure all stakeholders in the field of commerce and business as well as the people of Rwanda in general of quality justice tending to both the realization of the objectives of the reforms which have led to the creation of the commercial courts and meeting the needs of a society moving steadily towards full economic development.

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- ① As stated by the US Supreme Court Justice WARREN BURGER, in our day-to-day noble work of adjudicating we should always keep in mind that: *“The obligation of the legal profession is ... to serve as healers of human conflicts ... [W]e should provide mechanisms that can produce an acceptable result in the shortest time, with the least possible expense and with a minimum of stress on the participants. That is what justice is all about”*.

THANK YOU