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ENFORCEABILITY OF ORAL COMMERCIAL CONTRACTS UNDER RWANDAN LAW: RECONCILING STATUTORY FORMALISM WITH COMMERCIAL REALITY

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ABSTRACT

Although Article 42(4°) of Law No. 45/2011 governing contracts requires written form for commercial contracts exceeding FRW 50,000, oral agreements remain widely enforceable in Rwanda when supported by corroborative evidence or established commercial usage. The recent Law No. 062/2024 governing evidence (Article 52(1)) has clarified and strengthened this exception by expressly permitting oral testimony when “other evidences support the testimony”. Drawing on landmark Supreme Court decisions, this article demonstrates that Rwandan courts adopt a pragmatic, pro-commerce approach that prioritises mutual trust, partial performance, and trade custom over rigid formalism. The paper concludes with a policy recommendation for a voluntary National Commercial Registry to enhance certainty while preserving the flexibility inherent in Rwandan business culture.

Keywords: oral contracts, commercial law, law of evidence, judicial pragmatism, , commercial customary practice

1. INTRODUCTION

Modern contract law in most civil-law jurisdictions, including Rwanda, generally favours written form as a safeguard against fraud and evidentiary uncertainty. Nevertheless, oral agreements continue to

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dominate day-to-day commerce in many developing economies where speed, personal trust, and long-standing relationships prevail over bureaucratic formality.³

Rwanda presents a fascinating case study of how a civil-law system can accommodate commercial reality within a formalist statutory framework. Despite the apparent mandatory writing requirement in Article 42(4°) of Law No. 45/2011, Rwandan courts routinely enforce high-value oral commercial contracts when objective evidence or recognised trade usage exists.⁴ This judicial pragmatism has now received explicit legislative endorsement through Article 52(1) of the new Law No. 062/2024 governing evidence.⁵

2. GENERAL PRINCIPLES OF CONTRACT FORMATION UNDER RWANDAN LAW

Article 4 of Law No. 45/2011 establishes four cumulative requirements for the validity of any contract, whether written or oral: (i) mutual consent, (ii) capacity of the parties, (iii) a determinate and possible object, and (iv) a licit cause.⁶ Oral agreements that satisfy these conditions are, in principle, as binding as written ones.⁷

3. THE STATUTORY WRITING REQUIREMENT AND ITS SCOPE

Article 42(4°) of Law No. 45/2011 provides that contracts for the sale of goods whose value exceeds fifty thousand Rwandan francs (FRW 50,000) must be evidenced in writing.⁸ On a strict reading, this provision constitutes an *ad probationem* (evidential) formality rather than an *ad validitatem* (validity) requirement.⁹ Failure to observe the written form does not render the contract void but restricts the means of proving its existence and terms.

³ See generally N Kosanović, 'Development of contract form in roman law illustrated by stipulation as a verbal contract' (2024) 22 *Facta Universitatis – Law and Politics* 69.

⁴ Law No. 45/2011 of 25/11/2011 governing contracts, art 42(4°), Official Gazette n° 04bis of 23/01/2012.

⁵ Law n° 062/2024 of 20/06/2024 governing evidence, art 52(1), Official Gazette n° Special of 24/07/2024.

⁶ Law No. 45/2011 (n 2) art 4.

⁷ *ibid* art 3 (principle of consensualism).

⁸ *ibid* art 42(4°).

⁹ See *SOCOGEDE SA v BRALIRWA*, Supreme Court, Judgment no R.COM.A 0156/11/CS, 7 December 2012.

4. THE DECISIVE EVIDENTIAL EXCEPTION: ARTICLE 52(1) OF LAW NO. 062/2024

The Law No. 062/2024 of 20 June 2024 governing evidence introduced a crucial clarification in Article 52(1): oral testimony shall not be admitted to prove the existence or content of a legal act required by law to be in writing, “unless other evidences support the testimony”.¹⁰ This provision effectively transforms the writing requirement from an absolute bar into a flexible rule: oral testimony becomes admissible whenever corroborated by objective evidence (invoices, delivery notes, bank transfers, electronic messages, witness statements, partial performance, etc.).¹¹

5. FACTORS STRENGTHENING ENFORCEABILITY OF ORAL COMMERCIAL AGREEMENTS

Rwandan courts consider a range of practical indicators when assessing oral contracts:

- Partial or complete performance by one or both parties
- Existence of corroborative documents (even informal ones)
- Pre-existing or ongoing commercial relationship
- Clarity and specificity of the terms alleged
- Detrimental reliance by the promisee
- Established trade usage expressly recognised by Article 75 of Law No. 45/2011¹²

¹⁰ Law n° 062/2024 (n 3) art 52(1).

¹¹ Explanatory note accompanying the draft law (on file with the Parliament of Rwanda, June 2024).

¹² Law No. 45/2011 (n 2) art 75.

6. JUDICIAL PRAGMATISM: KEY SUPREME COURT DECISIONS

6.1 SOCOGEDI SA V BRALIRWA

In this 2012 decision, the Supreme Court held that commercial agreements “may be proven by relationships that characterized both parties even when it [is] unwritten especially [since] commercial law does not provide for it”.¹³

6.2 ROCK GLOBAL CONSULTING LTD V IMPACT DISTRIBUTORS EAST AFRICA LTD

The Court emphasised that “commercial dealers trust each other in their transactions with disregard of given formalities” and that evidence must be assessed holistically on the basis of “all the facts and legal considerations”.¹⁴

6.3 NEW KIGALI BUSINESS SERVICES LTD V KASESE DISTILLERS LTD

More recently, the Supreme Court reiterated that “in commercial transactions, the evidence of commercial activities should not necessarily be in written form”.¹⁵

These authorities establish a clear judicial policy: legitimate business dealings must not fail merely for lack of writing when trust, performance, and corroboration are present.

¹³ SOCOGEDI SA v BRALIRWA (n 7).

¹⁴ ROCK GLOBAL CONSULTING Ltd v IMPACT DISTRIBUTORS EAST AFRICA Ltd, Supreme Court, Judgment no RCOMA0041/13/CS, 3 March 2016.

¹⁵ NEW KIGALI BUSINESS SERVICES LTD v KASESE DISTILLERS LTD, Supreme Court, Judgment no RS/INJUST/RCOM 00004/2020/SC, 19 November 2021.

7. COMPARATIVE PERSPECTIVE AND POLICY IMPLICATIONS

Rwanda's approach aligns with several civil-law jurisdictions that have softened writing requirements in commercial matters (e.g., the French Cour de Cassation's liberal interpretation of Article 1341 of the Civil Code or Article 124 of the Ethiopian Civil Code).¹⁶ The Rwandan solution, however, is distinctive in its combination of legislative flexibility and consistent judicial pragmatism.

8. RECOMMENDATION: A VOLUNTARY NATIONAL COMMERCIAL REGISTRY

To further enhance legal certainty while preserving flexibility, Rwanda should establish an online voluntary National Commercial Registry where parties may register high-value oral or partially performed agreements within seven days of conclusion.¹⁷ Registration would create a rebuttable presumption of validity and date-certainty, without making registration mandatory—mirroring successful models in several OHADA member states.¹⁸

9. CONCLUSION

Oral commercial agreements occupy a secure and practical place in contemporary Rwandan law. The interplay between the writing requirement in the Law governing contracts and the flexible evidential rule in Article 52(1) of the 2024 Law governing evidence, combined with a pro-commerce judicial philosophy, ensures that genuine transactions are protected against excessive formalism. With the proposed voluntary registry, Rwanda can achieve an optimal balance between legal certainty and the speed and trust that characterise its vibrant commercial environment.

¹⁶ Cass com, 17 October 2000, no 98-17.845 (France); Ethiopian Civil Code 1960, art 1722 read with art 124.

¹⁷ Similar optional registration systems exist for commercial pledges under Law n°34/2013 of 24/05/2013 on security interests in movable property

¹⁸ See OHADA Uniform Act on General Commercial Law, arts 47–50 (registration of commercial enterprises and certain contracts).

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