

RWANDA / JUDGMENT

# J.V.PironThomas & Piron Grand Lacs Ltd(TPGL) v. Dr Clean Project

RCOMA 0038/12/CS &amp; RCOMA 0039/12/CS

COURT

Supreme Court

DECIDED

19 September 2014

CASE / FILE NUMBER

RCOMA 0038/12/CS &amp; RCOMA 0039/12/CS

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## J.V.PironThomas & Piron Grand Lacs Ltd(TPGL) v. Dr Clean Project

- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2014-09-19
- Case/document no.: RCOMA 0038/12/CS & RCOMA 0039/12/CS
- Collection: Supreme Court

### Text

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J.V.PironThomas & Piron Grand Lacs Ltd(TPGL) v. Dr Clean Project [Rwanda SUPREME COURT–RCOMA 0038/12/CS & RCOMA 0039/12/CS (Hatangimbabazi, P.J., Gatete and Mukamulisa, J.) 19 September 2014] Law relating to the contracts and the contractual obligations –The contract –The additional works of finishing the house performed after the period provided for in the contract – In case the one who performed the works of finishing has continued to get losses by the expenses of the money relating to those works due to the ground of the fact that the houses have been delayed to get completed, the one whose finishing works were performed for cannot deny to pay for them while it really knew that those works continued and it profited from them. The law of 30/07/1888 relating to contract or contractual obligations, article 64; Law relating to the contract or the contractual obligations –The interests calculated at the rate of 18% per year –The damages –The lawyer's fees - The law of 30/07/1888 relating to contract or contractual obligations, article 258. Law relating to the civil procedure –The penalty forcing the execution –The penalty forcing the execution is issued in case there is uncertainty that the payment cannot be found –The Law

N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 216. Facts: Dr Clean Project made a contract with JV-TPGL of finishing the house of RSSB. That contract was for three weeks but it has been necessary that the finishing works continued and exceeded the period which was provided for in the contract. Due to the fact that TPGL has delayed to pay it for the additional works performed, Dr Clean Project Ltd filed a claim against TPGL before the Commercial High Court requesting to be paid 43,196,568 resulting from the works of finishing that house which were performed in the period in exceeding three weeks. The Commercial High Court has ordered JV-TPGL Ltd to pay to Dr Clean Project Ltd 3.144.405 Rwf for the performed works in additional days, that for procedural fees and that of the penalty forcing the judgment execution. Both parties appealed to the Supreme Court, TPGL says that the judge of the first instance ordered to pay to Dr Clean the cost of the additional works performed while there was no written authorization of TPGL approving that those additional works be performed and condemned to the penalty forcing payment for no ground. As to Dr Clean Project it says that it appealed due to the fact that the judge of the first instance has miscalculated the cost of the additional works. The one pleading for TPGL says that it has not to be charged the additional works performed by Dr Clean Project since there was no written authorization permitting Dr Clean to continue those works. Those pleading for Dr Clean say that TPGL observed how the works were going on to be performed and it did not stop them, while those who performed them were paid from the patrimony of Dr Clean Project. With regard to the interests and damages that TPGL is requested to pay, Dr Clean says that the delayed payment went on making it to incur the losses, thus it requests to be paid the interests calculated on the rate of 18% per year, and pays the damages for that behavior. While the one

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representing TPGL says that in this case the commercial interests and damages seem to be the same, and the court has provided them without basing on substantive proof. Held: 1. TPGL cannot deny paying for the additional works saying that there was no written authorization approving the additional works in case there are other documents it has wrote to it thanking it for good works performed. And the evidence proves that those works were performed. Thus TPGL has to pay to Dr Clean Project Ltd 37,286,667 Rwf, and pay it as the article 10 of the contract made by those both parties provides.

2. The fact that in the contract made by both parties nowhere they have provided for that the party who shall fail to perform it will pay to the other party the interests calculated on such rate, the court has no basis to provide them, however Dr Clean has to be provided with the damages equal to 500,000 Rwf since TPGL went on ignoring to pay while there were the works performed for it. As for the lawyer's fees, could not have based on the rate of 10% of the amount of money it is requested to be paid instead there should be the consideration of the nature of the case, thus Dr Clean has to be provided with the lawyer's fees equal to 500,000 Rwf.

3. Since TPGL was willing less to pay that's why the penalty forcing to pay is necessary, however because is gravity cannot be provided basing necessarily on the value of the claimed amount, in the court's discretion it has to remain on 50,000 Rwf per month in case TPGL refused to pay voluntarily. The appeal of Dr Clean Project Ltd has merit on some grounds, while the appeal of TPGL has no merit; The judgment appealed against R COM 0280/12/HCC changes in its content; The court fees to the plaintiff. Statutes and statutory instruments referred to: The law of 30/07/1888 regulating the contract or the contractual obligations, article 64 and 258; the contract made between TPGL and Dr. Clean on 15/09/2011, article 10; The Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 216. No case was referred to:

## Judgment

### I. BRIEF BACKGROUND OF THE CASE

1. On 15/09/2011 Dr Clean Project Ltd made a contract of finishing the house of RSSB (Insurance Plaza) with JV - TPGL Ltd. That contract was for three weeks, from 15/09/2011 to 10/10/2011, Dr Clean has to be paid 4.700.000 Rwf, and it argues that due to the fact that the construction of that house has delayed to be executed, it has been necessary that also the finishing works could not be completed on time agreed up on in the contract, but it extended until 29/02/2011.
2. Dr Clean Project Ltd filed a claim against TPGL before the Commercial High Court requesting to be paid 43,196,568 resulting from the works of finishing that house which were performed in the period in excess to three weeks which were provided for in the contract (the work was performed from 15/09/2011, and get finished on 29/02/2012) on

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the faults of TPGL, due to the fact that the house which was being constructed delayed to get completed and made Dr Clean delay to complete the works in the period which was agreed upon in the contract, and made it to suffer a considerable loss.

3. On 06/02/2013, the Commercial High Court has decided the case and ordered JV-TPGL Ltd to pay to Dr Clean Project Ltd 3.144.405 Rwf for the performed works in additional days and pay the procedural fees equal to 314,440 Rwf, JV-TPGL Ltd again has been ordered to pay the penalty enforcing execution equal to 50,000 Rwf per month, and to pay the court fees equal to 6,200 Rwf.
4. Both parties appealed to the Supreme Court, in summary TPGL saying that the judge of the first instance ordered to pay the cost of the works performed in 167 days in excess to three weeks which were provided in the contract, in case there was no written authorization of TPGL approving that those additional works be performed, another ground is the decision on the penalty forcing payment for no ground while there was no enforceable judgment to which it denied to be executed. As to Dr Clean, it says that it appealed due to the fact that the

judge at the first instance has miscalculated the cost of the additional works performed in 167 days; he confused the ordinary damages with commercial interests and decided the penalty forcing the execution on very little value.

5. The case was tried on 22/07/2014, Me KAZUNGU pleading for TPGL, while Me MASUMBUKO Nde Emile and Me BUZAYIRE Angèle pleaded for Dr Clean, in this case the court will analyze if the works performed after the period which was provided for in the contract has to be paid, if necessary their cost will be determined; the issue of commercial interests and the damages requested, the penalty forcing for the payment and the lawyer's fees. II. LEGAL ISSUES OF THE CASE AND IT'S ANALYSIS The issue of knowing whether the performed works which were not provided for in the contract has to be paid and that of determining their cost
6. The one pleading for TPGL says that the additional works which were performed by Dr Clean in 167 days in excess to three weeks which were provided in the contract it could not have claimed them due to the fact that basing on what is provided for by the article 440 of the Third Book of the Civil Code, there was no writing authorizing the performance of those works, instead the article 64 of the Law n° 45/2011 of 25/11/2011 governing contracts has to be respected, it provides for that the contract is binding between the parties.
7. Those pleading for Dr Clean argue saying that TPGL based on the article 64 of the law governing the contract while it is the very article which provides for that the contract has to be executed in good faith, the fact that the finishing works in three weeks from 15/09/2011 and get completed on 10/10/2011, but due to the fact that building was not completed yet, and made the finishing works continue for 167 additional to the period provided for, performed at the knowledge of TPGL and did not stop them and those who

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performed those works were paid from the property of Dr Clean, thus TPGL has to pay their cost as the judge of first instance has decided it, and indeed on 29/02/2012 TPGL has accepted those works since it wrote to Dr Clean thanking it for the good works it performed, that letter is substantial proof testifying that those works were performed, TPGL has to pay the cost spent on them. THE VIEW OF THE CASE

8. The court realizes that both parties agree on the ground that after the period which was provided in the contract, Dr Clean continued to perform the finishing works, and that TPGL undoubtedly knew that those works of finishing continued being done.
9. The court realizes that the article 440 mentioned above on which TPGL bases to deny to pay for the additional works is the work contract relating to building and it is based on the project plan agreed up by the parties to that contract, it means that the contract of finishing the house mentioned in this case has not to be included in the contract of works basing on the total cost agreed up in the building, though finishing is not building.

10. TPGL cannot take an excuse that it has not to pay the finishing works performed after the period which is in the contract, in case it is the one which made those works to be done at its knowledge, due to its delay in constructing provoked the continuation of finishing works. In case it undoubtedly knew that those works were going on from its role, it has not to deny paying when it is profiting on one hand at the detriment of Dr Clean on another hand, if it continued to invest the money relating to the finishing works due to the grounds resulting from TPGL's acts.
11. The court realizes then departing from three weeks (21 days) they have agreed on the cost of 4,700,000 Rwf, if calculated in consideration with 167 days which equal to 23.8 of weeks of performed works, and it is equal to 37,286,667 Rwf it has to pay to Dr Clean, and be paid as provided for by the article 10 of the contract made by both parties on 15/09/2011. With regard to the commercial interests of 18% and the damages that TPGL is requested to pay.
12. Dr Clean requests that it pays to it the commercial interests calculated on the amount of money it could have been paid, since the delayed payment goes on making it to incur the losses, thus it requests to be paid the interests calculated on the rate of 18% per year, and pays the damages for that behavior.
13. The one pleading for TPGL says that in this case the commercial interests and damages are similar because they are related to what has been spent by the one who claims to be paid, however the court did provide it without basing on substantive proof.
14. He goes on saying that the fact that the judge has decided that both commercial interests and damages cannot cumulatively be claimed, it is because they both aim at claiming to be compensated for the expenditures; these explanations were mostly based on the article 51 of the Third Book of the Civil Code.

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### THE VIEW OF THE CASE

15. The court realizes that in the contract made between both parties, nowhere it provides for that the party which will derogate from it will pay to the other the interest calculated at such rate, it is the ground that it cannot depart nowhere in providing them. But it realizes, basing on the article 258 of the Third Book of the Civil Code, Dr Clean deserves to be provided with, in the appreciation of the court, the damages equal to 500,000 Rwf since TPGL continued to ignore to pay while there are works which were performed at its profit. With regard to the penalty forcing to execute the judgment
16. Those representing Dr Clean explain that the judge at the first instance has provided for the penalty forcing the execution of judgment equal to 50,000 Rwf per month, that money is too little since he has thought that Dr Clean only claimed to be paid 2,096,270 Rwf, while it was really 43,196,568 Rwf, that's why it provided 500,000 Rwf which was claimed and it is not in excess.

17. The one representing TPGL says that even though the penalty intends to force executing, ignoring the principle of that it is given in case there is uncertainty of the payment, for him it has not to be considered.
18. The court realizes TPGL has showed the will of paying, this is the reason that basing on the article 216 of Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, the penalty forcing to pay is necessary to be enforced in this case due to the reasons explained above, but due to its gravity, it cannot be provided basing on the value of claimed amount, in the discretion of the court it has to remain at 50,000 Rwf per month from the date the of 19/10/2014 when TPGL did not properly pay. With regard to the Advocate fees
19. Those representing Dr Clean criticize the first judge the ways he has provided with the advocate fees which is calculated on false calculations, there should be provided the fee that is equal to 10% of the claimed amount as it is the practice. The one representing TPGL realizes even though it is not sufficient due to what has been explained, it was given in the discretion of the court.
20. The court realizes that the judge should not be forced to necessarily act in accordance to the rate equal to 10% of the claimed amount, however there should be the consideration of the nature of the case, its seriousness it is that which determine the amount of the services given which has to be remunerated, that is why Dr Clean has to be provided with the lawyer's fee equal to 500,000 Rwf. III. THE DECISION OF THE COURT
21. It decides that the appeal of Dr Clean Project Ltd has basis on some grounds, while the appeal of JV Piron-Thomas & Piron Grands Lacs Ltd has no merit;

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22. It orders JV Piron-Thomas& Piron Grands Lacs Ltd to pay to Dr Clean Project Ltd 37,286,667 Rwf as explained in the paragraph 11 of the judgment;
23. It orders also to pay to Dr Clean Project Ltd 1,000,000 Rwf as explained in paragraph 15 and that of 20 of the judgment;
24. It orders to it to pay again the penalty forcing to execute the judgment equal to 50,000 Rwf per every month as explained in paragraph 18 of the judgment;
25. It also orders it to pay the court fees;
26. It decides that the decision of the judgment appealed against R COM 0280/12/HCC changes in its entire content.

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Prepared on 11 October 2026 · Esheria