

RWANDA / JUDGMENT

MUHOZI v. SN BRUSSELS AIRLINES

RCOMA 0209/14/HCC

COURT

Commercial High Court

DECIDED

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Text

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MUHOZI v. SN BRUSSELS AIRLINES [Rwanda SUPREME COURT – RCOMA 0209/14/HCC (Nsengiyunva, P.J.,) May 16, 2014] Law relating the civil procedure – The damages resulting from the disappearance of the baggages with regard to air transport – Each party has to prove the veracity his arguments. The party cannot claim the damages for the disappearance of his baggages and be paid for the lost in case he did not reveal the writing notifying that missing baggages – Law n° 15/2004 of 12/06/2004 relating to evidence and its production, article 3; law n°21/2012 of 14/06/2014 relating to the civil, commercial, labour and administrative procedure, article 168. International convention – The damages resulting from delaying the passengers about the carriage by air – Diverse damages – The carrier is liable for damage occasioned by delay in the carriage by air of passengers, nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it took all measures that could reasonably be required to avoid the delay, though there are no technical evidences demonstrating that it took all the possible measures to prevent the passengers from delaying – The Montréal convention of 28 may 1999 for the unification of certain rules for international carriage by air, article 19. Law relating the civil procedure – Requesting the provisional execution of the judgment – The provisional

execution of the judgment is decided by the court if the evidence of litigation is an authentic or the matter of litigation is the debt acknowledged by the debtor in the case – Law n°21/2012 of 14/06/2014 relating to the civil, commercial, labour and administrative procedure, article 212. Facts: Muhozi Jean Luc has filed a claim against SN Brussels Airlines before the Commercial Court of Nyarugenge requesting the damages for his travel from Kigali to Bruxelles which was delayed and his baggage missing. The court decided his case inadmissible. MUHOZI Jean Luc appealed to the Commercial High Court since the first instance court has declared that he did not reveal the evidences stating that in his baggage there missed something. He says that he has revealed the passing board proving that from Kigali his baggage weighted 45 kgs, reaching to Kampala when his baggage was given back to him, he realised that there remained 29 kgs. The counsel for Muhozi say that he deserves the moral damages, financial damages for his lost baggages, together with the advocate fees. They requested that the judgment should be provisinally executed. The counsel for SN Brussels say that he deserves no damages since no fault was committed against him. With regard to knowing whether Muhozi's baggages decreased when it were under SN Brussels's control, the counsel for Muhozi say that he appealed because at the first instance, the court did not give him the damages for the decrease of his baggage, declaring that he revealed no evidence proving that in his baggage there missed something. The counsel for SN Brussels say that it has no connection with the decrease of Muhozi's baggage because no declaration of lost was done. With regard to SN Brussels failing to take all possible measures to avoid the delay of the passangers. The counsel for Muhozi say that he appealed because at the first instance, the court has declared that SN Brussels had the obligation of proving that it had taken all measure to prevent the air plane from getting the problem, and it did not provide with him the damages while it revealed no technical evidence proving that it took all measures to the court so that he

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might not delay. The counsel for SN Brussels says that the court did not contradict itself since in Muhozi's submissions, he approves that the air plane got the technical problem, and that it looked for another plane for the passengers and took them to the hotel for all the time the means of travailling were still inavailable. With regard to the financial damages, moral damages and the procedural fees, the counsel for Muhozi say that at the first instance, the court said that he was given 600 euros while he was not, that due to delaying him he deserves the moral damages, economic damages together with the advocate fees. The counsel for SN Brussels say that Muhozi deserves no damages since no fault was committed against him. Held: 1. Though at the appeal level the passenger carried with the air plane has revealed to the court the boarding pass proving the weight of hi baggage fro Kigali, the carrier cannot be held liable for the damages resulting from the disappearance of his baggage while no loss declaration which was made that it decreased when it was under the the carrier's control.

2. The fact that the carrier has taken the passengers to the hotel it transported, and looked another plane to transport them; it shows that it got considerable loss, spending a lot of money for them. It did take all possible measures to prevent the passengers from delaying. Thus it cannot be held liable for diverse damages, though it revealed no technical evidence to the court proving that it took all the possible measures to prevent the air plane from getting the problem.
3. Though the carrier has not to pay the diverse damages to the one it carried in the air plane and that the issue at the litigation is not the debt, it means that there has not to be the provisional execution. The appeal has no merit; No damages to be given to Muhozi for the decrease of his baggage; The judgment will not be provisionally executed; The decision of the case RCOM 0046/14/TC/Nyge does not change statutes and statutory instruments referred to: Law n°21/2012 of 14/06/2014 relating to the civil, commercial, labour and administrative procedure, article 168, Law n° 15/2004 of 12/06/2004 relating to evidence and its production, article 3, Montreal convention of 28 may 1999 for the unification of certain rules for international carriage by air, article 19. No case referred to.

Judgment

I. BRIEF BACKGROUND OF THE CASE

- [1] On 14/03/2014, the Commercial Court of Nyarugenge has decided on the case RCOM 0046/14/TC/NYGE in which Muhozi Jean Luc sued SN BRUSSELS AIRLINES KIGALI requesting the damages for having delayed the travel from Kigali to Bruxelles in which his baggage was lost, it decided that his case had no merit, it ordered him to pay to SN BRUSSELS AIRLINES KIGALI 1,000 dollars which is equal to 670,890 rwf and to pay 4,900 rwf for the court fees. On 11/04/2014 MUHOZI Jean Luc appealed to the Commercial High Court, his

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appeal was registered on RCOMA 0209/14/HCC. On 30/04/2014 the public hearing was held, MUHOZI Jean Luc was represented by Me NYIRINGABO Théoneste and Me KAREGA Blaise Pascal, SN BRUSSELS AIRLINES was represented by Me NIZEYIMANA Boniface and Me MBONYINSHUTI Camarade. Me NYIRINGABO Théoneste and Me KAREGA Blaise Pascal say that MUHOZI Jean Luc appealed since the first instance court has decided that he didn't reveal the evidences that within his baggage there missed something, he revealed in the boarding pass of the baggages stating that he came from Kigali on 11/05/2013 when its weight was 45 kgs, when they reached Kampala the airplane didn't continue to Bruxelles, SN BRUSSELS AIRLINES KIGALI has gone to find the residence to the passengers, on 14/05/2013 when they returned the baggages to him, he noticed that there remained 29 kgs and even they didn't get the airplane, which made him to add on the property he carried within his hands and made 35 kgs, while he did reveal the invoices of what he has bought. Me NYIRINGABO Théoneste and Me KAREGA Blaise Pascal say that MUHOZI Jean Luc appealed because the court has stated that it based on article 19 of the international convention relating to the carriage by air done at Montréal, SN BRUSSELS

AIRLINES has the burden of proving that it took all measures to prevent the problem that the airplane got for him not to delay around five days, he approves that he didn't reveal the technical evidences, which made him not to provide the damages with him. Me NYIRINGABO Théoneste and Me KAREGA Blaise Pascal says that MUHOZI Jean Luc has appealed since the court has stated that he was given 600 Euros while it was not, which is indeed words of SN BRUSSELS AIRLINES. Me NYIRINGABO Théoneste and Me KAREGA Blaise Pascal say that MUHOZI Jean Luc deserve damages for his lost baggages, moral damages, financial damages, damages for what he has spent and the advocate fees and that the judgment should be provisionally executed. Me NIZEYIMANA Boniface says that SN BRUSSELS AIRLINES has no connection with the decrease of MUHOZI Jean Luc's baggages that he made no declaration of loss and the fact that he added some properties within his baggages, this shows he controlled it himself, he could even remove them. Me NIZEYIMANA Boniface says that the court did not contradict itself since MUHOZI Jean Luc, him too, in his court submission approves that the airplane got the technical problems and the pilot decided to land at Entebbe (Kampala) and SN BRUSSELS AIRLINES has made all that the international convention of Montréal required it to do and looked another airplane for the passengers which took them where they went and looked for them the residence in the hotel during all the time the means of carrying them was not gotten, in addition to that even MUHOZI Jean Luc approves that all the measures were taken and failed at the last minutes for the reasons beyond its control. Me NIZEYIMANA Boniface says that MUHOZI Jean Luc did not deny that he wasn't given 600 Euros, but if he did not get them, he may claim them and be provided to him and he says that those Euros are not the damages for the faults however they were given to the passengers to prevent other companies to take them. Me NIZEYIMANA Boniface Me NIZEYIMANA Boniface says that MUHOZI Jean Luc deserves no damage since SN BRUSSELS AIRLINES committed no fault against him, that at the appeal instance he has to pay to it the damages for the procedural fees and the advocate fees equal to 1 euro; however the ordered damages at the first instance will remain. Me NYIRINGABO Théoneste and Me KAREGA Blaise Pascal say that when MUHOZI Jean Luc was at Entebbe (Kampala) he was not informed of the decrease of his baggages because SN BRUSSELS AIRLINES told him that he

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will do it at Bruxelles, and when he got there, he got its workers striking and it became impossible to do it, instead, it told him to take the train for his money and then after that money be paid back to him.

[2] The issues that the court has to analyse within this case are the following:

- Whether the baggages of MUHOZI Jean Luc decreased being under SN BRUSSELS AIRLINES's control, so as it has to pay to him their value;
- Whether SN BRUSSELS AIRLINES did not take all measures to prevent MUHOZI Jean Luc from delaying;

- Whether MUHOZI Jean Luc deserves the moral damages, financial damages and what he spent and the procedural fees;
 - If the judgment may be provisionally executed. II. THE ANALYSIS OF LEGAL ISSUES
1. With regard to the decrease of baggages under SN BRUSSELS AIRLINES's control and paying for the lost.
- [3] The article 3 of the Law n° 15/2004 of 12/06/2004 relating to evidence and its production provides for that each party has to prove the veracity of what he says. The article 168 of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides for that it is prohibited to submit in appeal new arguments or elements of evidence that were not heard at the first level.
- [4] Me NYIRINGABO Théoneste and Me KAREGA Blaise Pascal say that MUHOZI Jean Luc appealed because at first instance the court didn't provide with him the damages for the decrease of his baggages stating that he didn't reveal its evidences while he demonstrated that within his baggages there lacked something and he revealed the boarding pass of his baggages which stated that from Kigali on 11/05/2013 they were 45 kgs and getting at Kampala the airplane didn't continue to Bruxelles, SN BRUSSELS AIRLINES KIGALI took the passengers to hotel, on 14/05/2013 when his baggages were given back to him he noticed that there remained 29 kgs and beside they didn't get the airplane, which made him, on 16/05/2013, add on his baggages the properties he carried in hands, and the weight became 35kgs, while he has revealed the invoices of he has bought to it.
- [5] Me NIZEYIMANA Boniface says that SN BRUSSELS AIRLINES has no connection with the decrease of MUHOZI Jean Luc's baggages because he made no loss declaration and the fact that he added some properties on his baggages, it shows that he controlled it, he could even to remove some from it.
- [6] Me NYIRINGABO Théoneste and Me KAREGA Blaise Pascal say that when MUHOZI Jean Luc was at Entebbe (Kampala) did not declare that his baggages decreased since SN BRUSSELS AIRLINES told him that he would it at Bruxelles, when he reached there he found its workers

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striking and it became impossible to do it but it told him to take the train by his own money and then after return to him.

- [7] The court realises that the Commercial Court of Nyarugenge found SN BRUSSELS AIRLINES has not to be liable for the decrease of MUHOZI Jean Luc's baggage since it has no role in its decrease because he did not reveal to the court the boarding pass showing that when he got in the airplane his baggage was 45(paragraph 3 of the copy of judgment), thus it committed no fault since the letter of what is in the file shows that the boarding pass of 15/05/2013 shows 29 kgs and that of 16/05/2013 shows 35 kgs.

- [8] The court realises that though at appeal level MUHOZI Jean Luc revealed to the court the boarding pass of 11/05/2013 which shows that from Kigali his baggage weighted 45 kg, it does not show that it decreased on 15/05/2013 to 29kgs through SN BRUSSELS AIRLINES's role because nothing shows that he didn't take it to the hotel where he resided, and returned it on 15/05/2013 when it was decreased, beside to that the ones who called him say that on 15/05/2013 he took it in the hotel and added on other properties and the email of 14/05/2014 submitted by those who represent him requesting the passengers to Bruxelles who have baggage not returned to notify it through the email and failed to do it, thus he cannot be provided with the compensation for the creased baggage since SN BRUSSELS AIRLINES played no role in it. 2.With regards to the failure of taking all measures to prevent the passengers from delaying
- [9] The article 19 of the convention for the unification of certain rules for international carriage by air done at Montréal on 28 may 1999 provides for that the carrier is liable for damage occasioned by delay in the carriage by air of passengers, nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.
- [10] Me NYIRINGABO Théoneste and Me KAREGA Blaise Pascal say that MUHOZI Jean Luc appealed because the court of the first instance has stated that, basing on the article 19 of the international convention on carriage by air done at Montréal on 28 may 1999 SN BRUSSELS AIRLINES has the responsibility of proving that it took all measures to avoid the problem that the airplane got for him to delay in Kampala for around 5 days, and ignored it and failed to provide with him the damages while SN BRUSSELS AIRLINES proved nothing that it took all measures to avoid him from delaying since even those it took on 14/05/2013 and on 15/05/2013 were not respected at the extent that they got only to the airport while in the paragraph 7 he said that he revealed no technical evidence.
- [11] Me NIZEYIMANA Boniface says that the court did not contradict itself because MUHOZI Jean Luc also in his court submission approves that the airplane got the technical problem and the pilot decided to land at Entebbe (Kampala) and SN BRUSSELS AIRLINES has made all that the international convention of Montréal required it to do and looked another airplane for the passengers which took them where they went and dwelled them in the hotel during all the time the means of carrying them was not gotten yet, in addition to that even MUHOZI Jean Luc approves that all measures were taken and failed at the last minutes for the reasons beyond its control.

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- [12] The court realises the Commercial Court of Nyarugenge got the fact that SN BRUSSELS AIRLINES took the passengers it carried for residing in Imperial Group of Hotels Ltd, it is evident that the airplane got the serious problem since it got a big loss which it could not have accepted to happen if it had the power though it revealed no technical proofs to it that

it took all measures for the airplane not to get the problem but also the plaintiff did not prove that the defendant refused to take the measures to avoid the problem (paragraph 7 of the copy of the judgment).

- [13] The court realises that BRUSSELS AIRLINES used all possible means for the passengers, MUHOZI Jean Luc included, who came from Kigali on 11/05/2013 to Bruxelles not delaying to reach Bruxelles since the airplane got the problem as MUHOZI Jean Luc himself states it writing for his claim, instituting the case that it got the technical problems and the pilot decided to land at Entebbe, SN BRUSSELS AIRLINES found the residence for them and then after tried to look the airplane for them which was found on 16/05/2014 as those representing MUHOZI Jean Luc state it, if it has not taken all possible means for him not to delay, it could not have spent 364 dollars as proven by the invoices of Group of Hotels Ltd which has the means to spend them and it paid the ticket of 182 Euros as its writing shows it they exceed even that spent on him.
3. With regard to paying the moral damages, financial damages, the expenditures and the money for the procedural fees.
- [14] The article 19 of the convention done at Montréal on 28 May 1999 relating to the unification of certain rules for international carriage by air provides for that the carrier is liable for damage occasioned by delay in the carriage by air of passengers, nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures. The article 258 of the third book of the civil code relating to the contractual obligations or contracts provides for that any person's act which causes damage to another obliges the author to repair the consequences of his/her acts. The article of 167 of the Law n° 21/2012 of 14/06/2014 relating to the civil, commercial, labour and administrative procedure provides for that it is prohibited to lodge a new claim lodged at the appeal level.
- [15] Me NYIRINGABO Théoneste and Me KAREGA Blaise Pascal say that MUHOZI Jean Luc appealed because the court of first instance has said that he was given 600 Euros while he was not, which is only the words of SN BRUSSELS AIRLINES that due to having delayed him he deserves to be given the moral damages, financial damages, damages for what he spent and the advocate fees.
- [16] Me NIZEYIMANA Boniface says that MUHOZI Jean Luc did not deny that he was not given 600 Euros; however if he did not get it he may claim it and be provided with him and these Euros are not for the damages but they were given to the passengers to prevent that they are taken by other companies.

- [17] Me NIZEYIMANA Boniface says that MUHOZI Jean Luc deserves no damages since SN BRUSSELS AIRLINES committed no fault against him, that it request him, at the appeal instance, to pay to it the damages for the procedural fees and the advocate fees equal to one dollar however the damages ordered to him at the first instance will remain.

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[18]The court realises that MUHOZI Jean Luc deserves no damages since the court found out that SN BRUSSELS AIRLINES has taken all measures so that the passengers, him included, who came from Kigali on 11/05/2013 to Bruxelles not delay as the Commercial Court of Nyarugenge realised it, it realises that the claim requesting 600 euros cannot be admitted since it is new claim in appeal, because even in his writing instituting the claim at the first instance that he did not accept those euros

- [19] The court realises at the appeal level Muhozi Jean Luc has to pay to one American Dollar to SN BRUSSELS AIRLINES for the procedural fees and the advocate fees as requested by its counsel since his appeal made it to refer to the advocate.

4. With regard to the provisional execution of the judgment

- [20] The article 212 of the Law N° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure provides for that provisional execution order shall be issued if the evidence of litigation is an authentic or the matter of litigation is the debt acknowledged by the debtor in the case.

- [21] Me NYIRINGABO Théoneste and Me KAREGA Blaise Pascal say that MUHOZI Jean Luc requests that the judgment be provisionally executed.

- [22] The court realises that the judgment has not to be provisionally executed since the court found that SN BRUSSELS AIRLINES has not to give the damages to MUHOZI Jean Luc. III. THE COURT DECISION

- [23] It decides to receive the appeal submitted by MUHOZI Jean Luc but it decides that it has no merit.

- [24] It decides that nothing proves that MUHOZI Jean Luc's baggage he came with from Kigali on 11/05/2013 weighting 45 kgs decreased on 15/05/2014 up to 29 kgs through the SN BRUSSELS AIRLINES's role, that no damages to be given to him for the baggage decreased.

- [25] It decides that after that the airplane got the problem and the pilot decided to land at Entebbe, SN BRUSSELS AIRLINES took all measures so that the passengers, MUHOZI Jean Luc included, who came from Kigali on 11/05/2013 to Bruxelles might not delay, it took them there on 16/05/2014.

- [26] It decides that MUHOZI Jean Luc deserves no damages from by SN BRUSSELS AIRLINES; however he has to pay to it one American Dollar at appeal level for the procedural fees and advocate fees.
- [27] It decides that the judgment not to be provisionally executed.
- [28] It decides that the decision of the case R.COM 0046/14/TC/NYGE is not changed except the damages for the procedural fees and the advocate fees at appeal instance.

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- [29] It orders that at the appeal instance MUHOZI Jean Luc pays one American Dollar to SN BRUSSELS AIRLINES for the court procedural fees and the advocate fees.
- [30] It orders that the guarantee of the court fees paid by MUHOZI Jean Luc equals to what has been done in the case.
- [31] It orders the decision of the case R.COM 0046/14/TC/NYGE is not changed except the damages for the court procedural fees and the advocate fees at appeal instance.

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