

RWANDA / JUDGMENT

# SNCTPC - CHINA ROAD v. BEST Ltd

RCOMA 0196/12/CS

## COURT

Supreme Court

## DECIDED

21 February 2014

## CASE / FILE NUMBER

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## SNCTPC - CHINA ROAD v. BEST Ltd

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### Text

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SNCTPC - CHINA ROAD v. BEST Ltd [Rwanda SUPREME COURT – RCOMA 0196/12/CS (Mukanyundo, P.J., Hatangimbabazi and Gakwaya, J.) February 21,2014] Commercial procedure – Business law – The contract – Claiming for damages –The administrative decision is nullified by the court in case it was illegally taken – No damages may be awarded in case the plaintiff did not request that the administrative decision to be nullified. Business law – The damages from the amicable settlement – The claim for damages which is based on the transaction is not admitted if whom they claimed to be condemned to pay those damages was acquitted for the crime of abuse of trust basing on that amicable settlement in the criminal judgment which has become enforceable. Business law – The cross appeal – The cross appeal of the respondent is not admitted if it intends to request the court to change the decision on the issue which he/she lost in the judgment appealed against. Facts: On 16/02/2006, through Mininfra, the State of Rwanda made a contract with SNCTPC– China Road of constructing the road Ruhengeri-Kinigi of 21.8 Km, in that contract they agreed that the quarrying that will be needed to construct they would dig the quarries from MUBONA and Kara mines which have been given to BEST Ltd. This one started harassing SNCTPC by submitting to it the invoices for payment, and claims the damages arguing

that SNCTPC entered the quarrying of BEST Ltd and dug the stones without any permission. BEST Ltd seized the police with its claim, the prosecution sued the representative of SNCTPC prosecuting him for the claim of theft without violence, and Nyamirambo Primary Court which has been seized decided that Manager of SNCTPC was not convicted for the crime since there were no substantial evidences convicting him. BEST Ltd appealed before Nyarugenge Intermediate Court and it realized that SNCTPC has to be held liable for nothing since it has been given the permission of digging the quarrying of BEST Ltd by the State and decided that the damage that BEST claims, they cannot be provided with it. BEST Ltd lodged a claim before the High Court of Kigali which hears the administrative cases requesting that the ministerial order authorizing SNCTPC to dig the quarrying from the mines of BEST Ltd, should be nullified, and claimed the damages from SNCTPC and the State of Rwanda. The court decided that the damages that Best Ltd claimed from SNCTPC may not be provided with them since it have been authorized by the State. On 10/07/2006, BEST Ltd again sued SNCTPC before Nyarugenge Intermediate Court for having illegally quarried the construction materials in its quarries, and claimed the damages amounting to 145.000.000 Frw but due to judicial reform, the case was referred before the Commercial High Court which decided that SNCTPC loses the case and ordered it to pay to BEST Ltd 57.397.877 Frw. SNCTPC was not satisfied with that decision and appealed before the Supreme Court arguing that the Commercial High Court decided the case on the civil damages resulting from an offence (action civil) while it was not seized with it. During the hearing of the case in merits, SNCTPC requested that the damages charged with the Commercial High Court be removed since it committed no fault against BEST Ltd, which argues

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that these damages have to be provided, and requests that the amicable settlement that has been made between the Manager of Best be nullified. The ones representing BEST Ltd claim the damages they have claimed before the Commercial High Court, amounting in total to 569.786.200 Frw relating to all nonpaid invoices. SNCTPC says that it has to pay no damages since it dug the quarryings of BEST Ltd while it has the permission. BEST Ltd says that Kayitana who was the president of its board of directors has given himself the competence of signing the amicable settlement which aimed at mutually resolving the matter that BEST had with SNCTPC and he was not competent to, which caused the loss to BEST, he has to pay damages. The one pleading on behalf of Kayitana said that the issue related to the amicable settlement he was sued for that in the criminal case, and the court acquitted him. SNCTPC at its side requests the court to decide that the amicable settlement performed by Kayitana may be considered as valid since he was competent to make it, but the one pleading for BEST Ltd says that the amicable settlement was illegal. Held: 1.The fact that the administrative decision is illegal, it has to be decided by the courts, that the population may seize the court to stop the execution of that illegal decision, that the court cannot on its own motion decide the case, instead it is necessary that the aggrieved party lodged a claim, for then the judge to nullify that decision.

2. The cross appeal may not be admitted since the claim of damages is connected to the issue of the amicable settlement which has already been finally decided in the criminal cases in which the accused has been acquitted, and the accused won.
3. The Kayitana's cross appeal upon the appeal of BEST Ltd, and that of SNCTPC-China Road cannot be admitted since Kayitana lost on the issue relating to the validity of the amicable settlement he made with SNCTPC-China Road, thus he cannot, in appeal, request the court to change the decision relating that issue, instead he had to request it by lodging a principle appeal on that issue. The appeal has merit. The cross appeal has no merit. The court fees are to the defendant. No Statute and statutory instruments referred to: Case laws referred to: The judgment n° RPA 0250/TGI/NYGE

## Judgment

I. BRIEF BACKGROUND OF THE CASE [1] On 16/02/2006, through MININFRA, the State of Rwanda made a contract with SNCTPC-China Road of constructing the road RUHENGIERI-KINIGI of 21.8 Km, in that contract they agreed that the quarryings that will be needed to construct that road, will be provided with them by the State of Rwanda for free. Since that the State of Rwanda wanted that activity to be quick due to the fact that that road was so needed and it was of great importance for

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many people, the State of Rwanda told SNCTPC-China Road to go and dig the quarryings it needed for constructing the road from MUBONA and KARA quarries which had been given to another company called BEST Ltd, which told them that the letter which provided with them those quarries would be given to them after, which has been effected on 07/07/2006, but that letter provided for that it has retroactive effect from 22/02/2006, and that the validity of that permit was for 9 months which is equal to the period of the contract. [2] From the time SNCTPC-China Road started working, BEST Ltd started harassing the former frequently by sending to it the invoices requesting it to pay for the quarryings it dug in the quarries given to it. [3] Around 2004-2005, it is when SNCTPC-China Road entered the quarries of BEST Ltd and quarried stones without any permission for that, at that time it constructed the road RUHENGIERI-GISENYI, but in 2005 there has been an amicable settlement, SNCTPC-China Road said that it would never return in the quarries of BEST Ltd which afterwards it did again since February until June 2006 after getting the tender of constructing the road RUHENGIERI- KINIGI, it returned there and furthermore it took the quarryings that BEST Ltd had quarried. At that it time wrote to them and they agreed on that SNCTPC-China Road was going to pay for the first invoice. [4] BEST Ltd filed a claim to the police on 14/08/2006, and case was registered in the Primary Court of Nyamirambo under n° RP 0186/06/TB/NYG, the prosecution suing Ren Hong Peng who represents SNCTPC-China Road for the theft without violence or threat, and BEST Ltd claiming the damages in that case. [5] Nyamirambo Primary Court decided that Ren Hong Pen was not convicted for that crime since there were no substantial evidences convicting him, and declared that the liability to the

crime is personal that he could have been intervened in the name of the company, and the company does not commit a crime, it stated that SNCTPC–China Road had the permit for quarrying the stones issued by the State of Rwanda, that this has to be accountable to the State of Rwanda which issued that permit. [6] BEST Ltd appealed against that decision before Nyarugenge Intermediate Court, the case was registered under n° RPA 0530/09/TGI/NYGE, and judgement was rendered on 14/04/2011, the court realized no ground on which SNCTPC–China Road may be held liable since it was authorized to quarry by the State, it decided that the damages that BEST Ltd claimed may not be awarded since it realised that no crime was committed as it has explained. [7] The file demonstrates that there are other criminal cases in which BEST Ltd sued KAYITANA IMANZI Emmanuel among them NRP 0249/TB/NYG where the prosecution sued KAYITANA IMANZI Emmanuel for the crime of breach of trust he might have committed when he was the Administrator of BEST Ltd and when he made an amicable settlement with SNCTPC–China Road, BEST Ltd in that case claimed the damages, that judgment was appealed against under RPA 0250/TGI/NYG and it was decided on 27/09/2012, the court acquitted KAYITANA IMANZI Emmanuel for the crime of abuse of trust, and decided that no damages may be provided with BEST Ltd represented by BAKAREGEYA Ignace.

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[8] Except the criminal cases mentioned, BEST Ltd filed a claim before the High Court/Kigali competent to hear the administrative cases, requesting that the Ministerial Order n° 18/16.03/05 of 26/06/2006 awarding to SNCTPC–China Road the authorization for digging the materials in its quarries legally awarded to it, may be dismissed, and it requested that the State of Rwanda together with China Road may pay 1.667.518 Frw for damages. The court decided the case RAD 0125/08/HC/KIG on 13/05/2011 and decided that no proof that SNCTPC–China Road played any role in the enactment of the Ministerial order repealing the one which was awarding to BEST Ltd the authorization for quarrying. [9] The court realized that the faults committed against BEST Ltd were committed by the State of Rwanda and it condemned it to pay 10.000.000 Frw, it decided that the damages that BEST claims from SNCTPC–China Road are baseless since it was awarded the authorization for quarrying by the Ministerial Order n° 18/16.03/05 of 26/06/2006, thus it cannot be held liable since no fault was proven against it which contributed to the enactment of the Ministerial Order repealing the first one which authorized BEST Ltd to quarry construction materials [10] Before BEST Ltd filed a claim in police against the representative of SNCTPC–China Road for the prosecution to sue him for criminal case mentioned above, BEST Ltd on 10/07/2006, has lodged a claim against SNCTPC–China Road before Nyarugenge Intermediate Court, that it has illegally quarried the construction materials in its quarries, and claimed the damages amounting to 145.000.000 Frw. [11] Due to the reform of the judiciary, the case was referred before the Commercial High Court and registered under n° RCOM 0343/08/HCC, and it decided the judgment on 09/11/2011 and declared that SNCTPC–China Road loses the case and ordered it to pay to BEST Ltd 57.397.877 frw. [12] SNCTPC–China Road was not satisfied with that decision and appealed before the Supreme Court arguing that the court refused to

admit its procedural objection it has raised while it has basis, that the court has decided on the claim for civil damages while it is not the one it was seized with and the fact that the court decided basing on the statements of the police which were dismissed by the judgment on criminal case, and that it decided on the damages contravening with the decision taken in the administrative case while it has accepted to stay the proceeding to wait for the decision which would be rendered in it for fear of contradictions of the decisions. [13] On this appeal of SNCTPC–China Road, the case was publically heard for the first time on 15/10/2013, SNCTPC–China Road represented by Umubyeyi Béatrice, Rutabingwa Athanase, the counsels representing KAYITANA IMANZI Emmanuel who was forcibly intervened and Bakaregeya Ignace was assisted by Ruberwa Zacharie, the counsel. [14] During that hearing, Umubyeyi Béatrice, the counsel who represented SNCTPC–China Road has demonstrated that there is a procedural objection which has firstly to be analyzed basing on the fact that the Commercial High Court has analyzed the claim which was not in its competence. [15] On 15/11/2013, in the pre-examination, the court decided on that objection and decided that the Commercial High Court was competent to hear the claim of BEST Ltd claiming for the

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damages resulting from the fact that SNCTPC–China Road quarried the materials in the former's quarries which BEST Ltd considered to be illegal, it explained that, the fact that both SNCTPC–China Road and BEST Ltd are commercial companies, it is enough for the damages that BEST Ltd claims resulting from the the acts of SNCTPC–China Road has effected in commercial deals to which it is used, to be called commercial damages as provided for by the article 3 of the law n°59/2007 of 16/12/2007 mentioned above. [16] On 07/01/2014, the case was heard in merits, SNCTPC–China Road represented by Me Umubyeyi Béatrice while BEST Ltd was represented by its Managing Director Bakaregeya Ignace and assisted by Me Ruberwa Zacharie while Me Rutabingwa Athanase was representing Kayitana Imanzi Emmanuel. The parties were notified that the decision will be rendered on 21/02/2014. [17] After the closure of the hearing of the case, the Registrar of the Supreme Court on 13/02/2014 received the document of Bakaregeya Ignace saying that he has sent «the pleading note» and the evidences, he requested it to reopen the hearing arguing that there are arguments that the opposing parties have revealed to which he did not argue against and that there are additional court submissions of Kayitana Imanzi Emmanuel to which he did not get the sufficient time to prepare the defense court submission against them during the hearing. [18] The request of BEST Ltd was not admitted since in the statement of the hearing demonstrate that all the parties were heard, and they contradicted one another, what Bakaregeya requests for reopening the hearing is the way of looking for a new hearing of the case whose hearing was closed. [19] The file of the case demonstrates again that KAYITANA IMANZI gave two court submissions to this court, one was received on 12/08/2013 and the other one was received on 07/10/2013, and after that there has been the hearing on 17/09/2013 and on 15/10/2013 where the court heard on the objection raised by SNCTPC–China Road, the last hearing was made on 07/01/2014 which means that he got enough time to prepare his case, it is evident that he wants the new hearing while it was closed as it has been said. [20] With regard to the merits of

this case, SNCTPC–China Road desires in its appeal, the damages it was condemned by the Commercial High Court amounting to 57.397.877 Frw be dismissed since it committed no fault against BEST Ltd, while BEST Ltd in the cross appeal says that SNCTPC–China Road has to pay those damages since it took its materials it has dug in the quarries it was awarded of Kara and Mubona and that the agreement made illegally between SNCTPC–China Road and Kayitana Imanzi Emmanuel be nullified. When the cross appeal of Kayitana Imanzi Emmanuel was analyzed, he requests that the agreement made between it and SNCTPC–China Road has to remain valid.

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II. ANALYSIS OF LEGAL ISSUES ON THE APPEAL OF SNCTPC China Road Knowing whether SNCTPC China Road has to pay the damages to BEST Ltd claims in this case. [21] UMUBYEYI Beatrice, the counsel, who represents SNCTPC China Road, explains that BEST Ltd sued SNCTPC China Road saying that it entered its quarries without the authorization which they were legally awarded to it and it dug out the quarries it used in constructing the road RUHENGIERI-KINIGI in 2006 when they tarmaced it. She said that BEST Ltd has lodged a claim before the criminal courts, the case was registered under n° RP 0186/06/TB/NYGE, the representative of SNCTPC China Road is called REN HONG PENG sued for the crime of theft, BEST Ltd claimed for the damages in that case, when it was not yet decided, it again lodged the claim of those damages before the Commercial High Court and before the High Court for administrative case, she realized that that claim for damages is the same claim referred before different court. [22] Umubyeyi Beatrice, the counsel, says that in the pre-examination case n° RCOM 0343/08/HCC, the Commercial High Court has decided to stay the hearing at the request of SNCTPC–China Road for waiting until the judgment n° RAD 0125/HC/KIG get decided due to the connectivity of both cases, the court accepted it and stay the hearing for fear of not taking contradictory decisions. [23] Umubyeyi Béatrice, the counsel, says that the judgment n° RAD 0125/HC/KIG was decided by the High Court and decided that SNCTPC–China Road played no role in the disputes seized with that court relating to the use of KARA and MUBONA quarries, and provided the damages with it for having been involved in the court proceedings for no ground, however SNCTPC–China Road got surprised of in the deciding the judgment n° RCOM 0343/08/HCC in merits, the Commercial High Court decided that it committed the faults in case it used KARA and MUBONA quarries in constructing the roads of the Rwandan State, and condemned it to pay damages basing on the statement nullified by the criminal judgment n° RPA 0530/09/TGI/NYGE-RP-0186/06/TB/NYGE which acquitted its Managing Director. [24] Umubyeyi Béatrice, the counsel, says that SNCTPC–China Road could not pay to BEST Ltd the damages it claims since it committed no fault against it due to the fact that it quarried in KARA and MUBONA quarries though they have been awarded to BEST Ltd, it started quarrying when it held the unwritten authorization of the State Secretary in charge of water and mines but not until on 07/07/2006 did they get the letter to the Managing Director of SNCTPC– China Road in which they have wrote that that authorisation was issued from 17/02/2006 (with retroactive effect) and BEST Ltd did not request for its nullification. She concluded requesting that BEST Ltd pays to SNCTPC–China Road 5,000,000 FRW for damages for

having involved it in the court proceedings for no ground and 3,000,000 RWF for the lawyer's fees.

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[25] Bakaregeya Ignace, the counsel, representing BEST Ltd says that he does not accept the authorization that the State Secretary in charge of water and mines has issued to SNCTPC-China Road on 07/07/2006 authorizing them to enter the quarries of BEST Ltd which are located in KARA and MUBONA since they did not know about it that they revealed it before the court. [26] With regard to the argument of Umubyeyi Béatrice the counsel, of that the Commercial High Court could not have based on the statements which are in the criminal case, to condemn SNCTPC-China Road to pay damages, Bakaregeya Ignace who represents BEST Ltd says that that Court committed no fault since it realized those statements to be evidence proving the admission of SNCTPC-China Road that it took the materials that BEST Ltd has quarried out in its quarries given and that the representative of SNCTPC-China Road admitted it before the High Court which heard the administrative case (paragraph 4 of the decision of the judgment). [27] With regard to what have been said by SNCTPC-China Road that the decision of the Commercial High Court had not to contradict the decision taken in the administrative court, Bakaregeya Ignace and his lawyer say that the damages he was provided with in the administrative case, were those condemned to the State for having given to SNCTPC-China Road in the Ministerial Order of 26/06/2006 authorizing it to use the quarries of BEST Ltd which were legally awarded to the latter, while the damages that BEST Ltd claims in the commercial case are related to the materials quarried before BEST Ltd was deprived of those quarries by that Ministerial Order of 26/06/2006. [28] Rutabingwa Athanase, the counsel, who represents Kayitana Imanzi Emmanuel, says that they have no criticisms against the appeal of SNCTPC-China Road since what the dispute between the latter and BEST Ltd do not concern the one he represents, that in the court submission they provided with the court they tried to deeply explain about the cross appeal made by BEST Ltd suing Kayitana Imanzi Emmanuel for the agreement he made with SNCTPC-China Road. THE VIEW OF THE COURT [29] With regard to knowing whether SNCTPC-China Road has to pay the damages that BEST Ltd claims from it in case which result from the materials it quarried between 22/02/2006 and 25/06/2006 in KARA and MUBONA quarries, before being authorised by the Ministerial Order n° 08/16.03/05 of 26/06/2006, the file demonstrates that before that date of 26/06/2006, after SNCTPC-China Road being awarded the bid of constructing the road RUHANGERI- KINIGI, 16/02/2006, it is when it made an agreement with the State of Rwanda, represented by the Minister in charge of infrastructure, and promised to it that the quarrying it will need, will be given by the State of Rwanda, and in the letter of 07/07/2006, the State Secretary wrote informing it that it is given the authorization of quarrying KARA and MUBONA materials from 17/02/2006 and that that authorization will be used for whole period provided in the contract it made with the State of Rwanda. [30] It appears to this court that though on 26/06/2006, is the date on which the Ministerial Order n° 08/16.03/05 of 26/06/2006 was published, but the letter of 07/07/2006 mentioned above, SNCTPC-China Road was authorized by the State to dig the material from

those KARA and MUBONA quarries from 17/02/2006, this explains that what BEST Ltd says of that

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SNCTPC-China Road had no authorization of quarrying in those quarries between 22/02/2006 and 25/06/2006 is baseless. [31] And that as the Ministerial Order n° 08/16.03/05 of 26/06/2006 mentioned above is an administrative decision that BEST Ltd claims in the administrative judgment RAD 0125/08/HC/KIG decided on 13/05/2011 and got nullified, and get provided with the damages amounting to 10,000,000 FRW, which has finally become executable, the court realizes even that the letter of the State Secretary mentioned above is an administrative decision which could be nullified if BEST Ltd had claimed it to be nullified, if it considered it to violate its rights on its property or considered that it was issued illegally. [32] The legal scholar called Yves Gaudemet<sup>1</sup> says that the illegality of an administrative decision is decided by the court, that the population may seize the court for prevent the execution of illegal decision, that the court itself cannot initiate on deciding the case, that instead, whom feels that he/she has been victim may lodge a claim, for the judge to dismiss that decision. [33] The fact that BEST Ltd did not lodge a claim requesting that the decision of the State Secretary authorizing SNCTPC-China Road to quarry the materials for constructing the road from the quarries of BEST Ltd be nullified, this explains that it quarried them when it was authorized, thus the court realises that the damages that BEST Ltd claims from it may have no basis. [34] The court found instead, as the counsel SNCTPC-China Road argues it, BEST Ltd involved SNCTPC-China Road in drag into litigation, and it found that it deserves to be provided with the damages it requests, but they are to be provided within the discretionary power of the court since 5,000,000 FRW it claimed are too excessive, and it has to be provided with 1,000,000 FRW and 500,000 FRW for the advocate's fees. B. THE CROSS APPEAL MADE BY BEST Ltd

1. Knowing whether BEST Ltd may be provided with the damages it claims [35] The counsel for BEST Ltd says that the Commercial High Court did not provide them with the damages they have claimed saying that they revealed no evidence proving them, they request the court to provide them with the damages basing on the invoices that they handed to SNCTPC-China Road which are equivalent in total to 569.786.200 Frw. Among the evidence it gives there is the invoice of the remaining store of BEST Ltd that SNCTPC-China Road has taken from 20/09/2006 until 18/10/2006 valued at 47.872.000 Frw, luckily enough that SNCTPC-China Road admitted it in the letter of 02/02/2007 it wrote to BEST Ltd saying that it went to analyse it. [36] Umubyeyi Béatrice, the counsel, says that it has to pay no damage to BEST Ltd since what it quarried, it did it when it has the authorization as they have been explaining it, nevertheless what they say that it agreed to make an amicable settlement and that it admitted it faults, it is not true since it accepted to make an amicable settlement due to the fact that some of

1 Yves Gaudemet, Droit administratif, 18 édition, L.G.D.J. 453 Pages, p.121 ss,

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the leaders of BEST Ltd continuously harassed them, they called the police for frequent search and did it for at least getting rest. THE VIEW OF THE COURT [37] With regard to the damages that BEST Ltd claims from SNCTPC – China Road in its cross appeal, due to the materials it claims for the latter to have illegally dug in its quarries of KARA and MUBONA from 22/02/2006 until 25/06/2006, the court realises as said above, SNCTPC – China Road has to pay no damage to BEST Ltd that what they quarried between 22/02/2006 until 25/06/2006, it has been authorized by the State Secretary in charge of water and mines in the letter of 07/07/2006. he/she wrote to its Director. [38] The court found that BEST Ltd contradicts itself since once it says that the damages it claims from SNCTPC–China Road are for the quarrying material it has taken between February and June in 2006, while among the evidences it reveals they prove the injustice that the Chinese exerted to it and provide the invoices of from 20/09/2006 until 18/10/2006 equivalent to 47.872.000 Frw and it says that those of after 26/06/2006 it claimed them before the administrative court, which is understood that what BEST Ltd claims has no basis.

2. Knowing whether the damages that BEST Ltd claims to be paid by SNCTPC –China Road together with Kayitana Imanzi Emmanuel for the transaction that they made and caused loss, may be provided with them or this transaction be nullified. [39] The counsel for BEST Ltd says that KAYITANA IMANZI Emmanuel was the chairperson of the Board of Directors of BEAT Ltd, he was elected for only one year term, after that he has given himself the competence of making the amicable settlement about the dispute that BEST Ltd has against SNCTPC–China Road on 04/09/2007 while he was not competent for it, this caused a loss to it that's why they claim the damages from him since he is the one who prevented the SNCTPC–China Road paying to them for their materials it took. They say that the damages they claim from him are different from those they claimed in the criminal case before Nyarugenge Intermediate Court since it decided that it has given to him no mandate and he has abused it, that the damages they claimed in the judgment RCOM 0343/08/HCC are the economic damages he has to pay together with SNCTPC–China Road since he agreed the money not corresponding to what BEST claimed, they request that amicable settlement illegally made to be nullified. [40] Umubyeyi Béatrice, the counsel, says that amicable settlement made between SNCTPC – China Road and Kayitana Imanzi Emmanuel was made for dismissing the judgment RC0174/06/TGI/NYGE which has filed before Nyarugenge Intermediate Court, which also became this one for this hearing and that it was not done due to the faults that SNCTPC–China Road admitted to have committed as the one pleading for Bakaregeya Ignace wants to explain it, it was instead done for the sake of getting rest since some of the leaders of BEST Ltd always

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harassed it where they brought the police which conducted frequent searches, thus the damages it claims may not be provided with them. [41] Rutabingwa Athanase, the counsel, says that Kayitana Imanzi Emmanuel has no role in the removal of the materials of BEST Ltd, that relating

to the amicable settlement he was prosecuted for it in a criminal case and the court acquitted him for the crime, and that the Commercial High Court decided that there was no liability in the paragraph 19 of the decision of the judgment, and he also requests the court to decide that he made the amicable settlement when he was competent to it as the President of the Board of Directors of BEST Ltd and that Bakaregeya there are some documents that Kayitana signed in that quality, that they cannot argue that he lead for only one year since after he was not replaced because the one who replaced him took the office on 15/03/2008. They say that the damages that BEST Ltd claims from Kayitana in this case, it has claimed them in the judgment RPA 0250/TGI/NYGE which it lost, that it has chosen the court to seize and that it cannot file again the claim, claiming them in another case as provided for by the article 130 of the law n° 13/2004 of 17/05/2004 relating to criminal procedure. THE VIEW OF THE COURT [42] With regard to what BEST Ltd claims in the cross appeal of that the transaction made between Kayitana Imanzi Emmanuel and SNCTPC-China Road continues to be nullified as it was decided by the Commercial High Court which has condemned him together with it to pay to it the damages for that illegal transaction, the court realises though the respondent in appeal was not prevented, in the cross appeal, to sue the other one who is sued in the appeal, what is evident is that the issue of this amicable settlement was decided where Kayitana Imanzi Emmanuel was sued for the abuse of trust basing on this transaction to which afterwards he was acquitted to and in these cases BEST Ltd was represented by Bakaregeya Ignace, it claimed for damages and failed to get them (see the judgment n° RPA 0250/TGI/NYGE of 27/09/2012), it is clear that the issue of that transaction was finally decided in the criminal cases mentioned above, thus its cross appeal may not be admitted. [43] This is in accordance with the legal writer called Talendier<sup>2</sup> where he says that the respondent in the appeal is allowed to make a cross appeal for suing another one who is sued in the appeal, if he/she intends to remain with what has been provided with him at the first instance, ( l'appel peut avoir lieu, d'intimé à intimé, quand l'intimé n'a pas eu d'intérêt à appeler contre celui vis-à-vis duquel il a succombé, et qu'il s'agit pour lui, en appel de conserver le bénéfice de ce qui a été jugé en première instance), but in this case what is clear is that BEST Ltd may remain with nothing related to the transaction in case there has been a final decision in the criminal cases mentioned above.

<sup>2</sup> Talendier, Traité de l'appel en matière civile ( E-BOOK-free), Section Dixième, the appeal on the objection is inadmissible for the respondent against the respondent.

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C. THE CROSS APPEAL MADE BY KAYITANA IMANZI EMMANUEL Knowing whether the transaction made between SNCTPC-China Road is valid and that the damages he claims from BEST Ltd may be awarded to him [44] Rutabingwa Athanase, the counsel says that in the paragraph 18 of the judgment n° RCOM 0343/08/HCC, the court decided that the amicable settlement that Kayitana made with SNCTPC-China Road on 04/09/2007 is not valid since the term office to which Kayitana Imanzi Emmanuel was elected for was for one year, he made a cross appeal upon the appeal made by SNCTPC-China Road and that of Bakaregeya Ignace requesting the court to decide that that transaction is valid since Kayitana was competent to

make it as it is in the third decision of the general meeting of BEST Ltd of 19/11/1998, he was elected to be its President, in that meeting he was given the duties including that of recovering debts for BEST Ltd. [45] He says that Bakaregeya's arguments of that he could hold office for one year it has no basis since he was not replaced and that when they were in good relationship, he signed on many documents of BEST Ltd and did not revoke them. [46] He requests the court to decide that BEST Ltd loses and condemn it to pay to him the damages for the involvement in court proceedings and the lawyer's fees which make in total 5,000,000 FRW. [47] Bakaregeya Ignace, the counsel for BEST Ltd says that that transaction is illegal and it was made when Kayitana has himself withdrawn from the case. THE VIEW OF THE COURT [48] With regard to this issue of Kayitana Imanzi Emmanuel's cross appeal made upon the appeal of SNCTPC-China Road and that of BEST Ltd, the legal scholar called Talendier mentioned above says that the respondent in appeal is not allowed to make a cross appeal to sue another one who is also respondent in the appeal who won him/her, when he/she intends to get in his/her appeal what has not been provided with him/her at the first instance, that in this case he/she may lodge a principal appeal<sup>3</sup> [49] Basing on the explanations of the legal scholar mentioned above, the court found Kayitana Imanzi's cross appeal, who is respondent in this case who made it upon that of BEST Ltd which is also respondent, and upon that of SNCTPC-China Road, that it may not be admitted since Kayitana Imanzi Emmanuel lost on the issue of the validity of that amicable settlement he made with SNCTPC-China Road, that he cannot request, in appeal, the court to

3 Talendier, op cit.

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change the decision relating to that issue as said by the writer, he would instead request it by making a principal appeal on that issue. [50] With regard to the damages for drag into litigation p and the advocate's fees of 5,000,000 FRW that Kayitana Imanzi claims from BEST Ltd, the court realises as said above, the issue of damages claimed from Kayitana Imanzi Emmanuel basing on the transaction he made with SNCTPC-China Road, has been finally decided in the criminal case, it is evident that BEST Ltd reinvolved Kayitana Imanzi Emmanuel in this case for no ground that's why he has to be provided with the damages in this case and the advocate's fees, in the discretion of the court it provides with him 500,000 Frw for the moral damages and 500,000 Frw for the lawyer's fees since 5,000,000 Frw he claims is too excessive. III. THE DECISION OF THE COURT [51] Decides that the appeal of SNCTPC-China Road has merit; [52] Decides to to admit the cross appeal made BEST Ltd for what it claims from SNCTPC- China Road, but has no merit; [53] Decides that the damages that BEST Ltd claims from Kayitana Imanzi Emmanuel for the amicable settlement he made with SNCTPC-China Road since it was lodged in the illegal procedures; [54] Decides that the cross appeal made by Kayitana Imanzi Emmanuel upon that of BEST Ltd with regard to deciding that the transaction he made with SNCTPC-China Road he made when he was competent and that it is valid since they were lodged in illegal procedures; [55] Decides that the cross appeal made by Kayitana Imanzi Emmanuel upon BEST Ltd in which he claims to be paid the moral damages and the lawyer's fees is admitted and has merit; [56] Orders BEST Ltd to pay to SNCTPC-China Road the moral damages amounting to 1,000,000 Frw and 500,000 Frw for the

lawyer's fees; [57] Orders BEST Ltd to pay to Kayitana Imanzi Emmanuel 500.000 Frw for involving him in the court proceedings for no ground and 500,000 Frw for the lawyer's fees, which makes in total 1,000,000 Frw. [58] Orders BEST Ltd to pay the court fees equal to 59,700 Frw, in case it fails to pay it within eight days, they will be taken from its patrimony through the State's.

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