

RWANDA / JUDGMENT

SORAS AG Ltd v. MTS Ltd

RCOMA 0044/13/CS

COURT

Supreme Court

DECIDED

21 November 2014

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SORAS AG Ltd v. MTS Ltd

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Text

Page 1

SORAS AG Ltd v. MTS Ltd [Rwanda SUPREME COURT – RCOMA 0044/13/CS (Mutashya, P.J., Nyirinkwaya and Gakwaya, J.) 21 November 2014] Insurance Law – Insurance contract – The liability based on insurance contract – The liability of insurer to the faults of the domestic of head of a company – The insurer shall not escape its duties mentioned in insurance contract pretending that the faults were committed by the domestic of the head of a company – Organic-Law no 20/75 of 20/06/1975 related to insurance, article 12 – Common terms and conditions related to special fire insurance, article 46. Obligation or contract Law – Solidarity obligations to pay – Solidarity obligation between insurer and the participant in the prejudice against insured – Solidarity obligation is not assumed, it shall be expressly provided in contract except when it is provided by the law – Decree of 30/07/ 1888 relating to contracts or conventional obligations, article 63 and 100. Insurance Law – Determining damages in case no party is showing the value of the object insured at the day of the accident – When no party has submitted the value of the object insured on the day of the accident, the damages are determined based on insured value – The value of damages shall never be more than the object insured at the day of the accident – Decree Law n o 20/75 of 20/06/1975 related to the insurance, article 27. Commercial procedure –

Penalty forcing the execution – In insurance cases, the court may determine penalty forcing the execution to the insurer when the insured spent long period requesting to be paid but not executed – Law n° 21/2012 of 14/06/2012 relating to the civil, commercial, labour and administrative procedure, article 216. Facts: On 30 October 2011, NZAYIRATA Donat burnt two car (2) belonging to Modern Technology Services Ltd represented by Kayibanda Joseph. After that accident, Modern Technology Services wrote to SORAS AG LTD requesting their repair or the payment of their value they had before the accident. On 26 January 2012, SORAS AG Ltd answered M.T.S. Ltd negatively, explaining that the fire was committed by a person that the insured shall be liable because Nzayirata Donat who burnt the cars, was the employee of Kayibanda Joseph. MTS Ltd filed a case against SORAS AG Ltd to the Commercial High Court stating that cars burnt belong to it not to KAYIBANDA, that both are two different legal persons. The Commercial High Court ordered SORAS AG Ltd and Nzayirata Donat to jointly pay the value of cars, it also ordered SORAS AG Ltd to pay damages to M.T.S Ltd and Kayibanda Joseph. SORAS AG Ltd appealed to the Supreme Court stating that the commercial High Court misused the article 260 of Civil Code Book III and led to unfair decision. It added that the court did not indicate ground of law which led the court to order SORAS AG Ltd to pay jointly SORAS AG Ltd with Nzayirata Donat while they were different and did not prove the ground of solidarity. M.T.S Ltd and Kayibanda Joseph were forced intervened in the case and stated that article 260 of Civil Code Book III was well applied because Kayibanda Joseph shall not be liable for the acts done by Nzayirata Donat because within his duties were not include to burn the cars of M.T.S.

Page 2

They also stated that because SORAS AG Ltd forced intervene Nzayirata Donat even he default to appear, it wished to pay jointly with him, that if is not necessary it shall compensate M.T.S ltd all insured destroyed property. M.T.S Ltd and Kayibanda Joseph filed the cross appeal; M.T.S Ltd requested to SORAS AG ltd procedural and advocate fees of 10% of the money determined by the court and ordered to pay 1,000,000 Rwf per month of penalty forcing execution. Kayibanda Joseph requested procedural and advocate fees equal to 800,000 Rwf. SORAS AG Ltd stated that it cannot pay any damages and fees to M.T.S Ltd and Kayibanda Joseph. Held: 1. Employer and agent are liable for prejudices caused by their employees when they execute the work. This shall not be the basis when the liability of the insurer derives from the contract between the insured and the insurer while the insurer cannot not escape or decline responsibilities provided in the contract. It is also when the insurer is not taken as victim, it cannot have status to the above mentioned request.

2. The solidarity is not assumed, it shall expressly be provided except it is based on law. The insurer is not forced to jointly pay with defaulter for his own reason when the request of the insured to the insurer is provided in their contract. But after paying the damages, the insurer has capacity and interests to sue the defaulter for paying the damages, but through filing another case.

3. When parties do not provide the value of the object insured at the day of the accident, it is paid of the insured value. If the damages are requested by the insured, the insurer is ordered to pay damages for non-execution or delay to execute obligations. As long as it does not prove the execution was for unforeseeable cause save in case of bad faith. Those damages include the loss and interest which should be generated by the insured.
4. Penalty forcing execution shall be given against insurer when insured spent long period requesting to be paid but not executed. Appeal lacks merit. Cross appeal has merit. Court fees to the appellant. Statutes and statutory instruments referred to: The Law of 30/07/ 1888 relating to contracts or conventional obligations , article and 45, 47, 63 and 100. Decree law no 20/75 of 20/06/1975 related to the insurance, article 12. 27 and 32. Common terms and conditions related to special fire insurance, article 46. No case referred to.

Page 3

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] On 30 October 2011, NZAYIRATA Donat burnt two car (2) belonging to Modern Technology Services Ltd (in acronym M.T.S. Ltd) which were in the parking of the house of KAYIBANDA Joseph, its managing Director. Because those cars were insured in SORAS AG Ltd, M.T.S. Ltd notified that accident to it and sent to it the repair quote of both cars Toyota Hilux RAB 417P and Nissan Infiniti RAB 115U and their values before the accident. He requested it their reparation or to be compensated the values they had before the accident. [2] On 26/01/2012, SORAS AG Ltd answered to M.T.S. Ltd negatively, explaining that the fire was committed by a person which our insured is legally responsible as his agent that also article 39 of the contract between them provides that the insured is not entitled to guarantees property damage, theft, fire when in a situation like that in terms of liability insurance and according to law, the company could refuse his intervention, namely claim from the compensation paid, that also NZAYIRATA Donat who burnt those car was an house worker of KAYIBANDA Joseph. [3] MTS Ltd filed a case against SORAS AG Ltd to the Commercial High Court requesting in the above mentioned claim. It explained that that those cars belonged to it not to KAYIBANDA, that both are two different legal persons, reason why SORAS AG Ltd shall be liable for those accidents. [4] The Commercial High Court heard the case RCOM 0050/12/HCC on 28 February 2013, and ordered SORAS AG Ltd and NZAYIRATA Donat to pay jointly M.T.S. Ltd the value of those cars equal to 42,000,000 Rwf. It also ordered SORAS AG Ltd to pay M.T.S. Ltd 20,160,000 Rwf, and ordered it to pay KAYIBANDA Joseph 1,050,000 Rwf. [5] SORAS AG Ltd was not satisfied by the court decision, on 22 March 2013, it appealed to the Supreme Court stating that the Commercial High Court misused the article 260 of Civil Code Book III, what led to unfair decision. It also stated that the court did not take into account the provisions of article 141 of Rwandan Constitution of 4/6/2003, as amending till now, article 147 of the law no 21/2012 of 14/6/2012 relating to the civil, commercial, labour and administrative procedure, and article 100 of Civil Code Book III because it ordered without any reason the solidarity between SORAS AG Ltd and NZAYIRATA Donat to pay M.T.S. Ltd 42,000,000 Rwf. Furthermore, it stated that the court did

not consider article 39 of common terms and conditions of vehicle insurance against fire, theft and property damage. [6] KAYIBANDA Joseph filed a cross appeal to that of SORAS AG Ltd, requesting the court that it shall pay him damages of procedural and advocate fees at appeal level. [7] MTS Ltd filed a cross appeal to that of SORAS AG Ltd requesting different damages relating to the accident occurred. It also requested the court to order SORAS AG Ltd the penalty forcing the execution and payment of damages for being taken into court for unnecessary litigation.

Page 4

[8] The case was heard in public on 21 October 2014, SORAS AG Ltd was represented by RUSANGANWA Jean Bosco, the counsel and Modern Technology Services (M.T.S.) Ltd represented by MUNDERERE Léopold, the counsel, KAYIBANDA Joseph was represented by NDAYISABA Fidèle, the counsel while NZAYIRATA Donat default to appear but he was summoned in accordance by the law, the court decided to continue the hearing in his absence. In the hearing, SORAS AG Ltd notified to court that it withdraw the reason of appeal of non respect of the article 39 of common terms and conditions of vehicle insurance against fire, theft and property damage. II. ANALYSIS OF LEGAL ISSUES

- a. Whether KAYIBANDA Joseph is liable of the acts done by NZAYIRATA Donat, his house worker [9] RUSANGANWA Jean Bosco, the counsel states that the Commercial High Court misuses the article 260 Civil Code Book III because it decides that KAYIBANDA Joseph is not liable of the fire accident caused by NZAYIRATA Donat, who burned two cars in litigation in this case, while NZAYIRATA Donat was his employee. He explained that article 260 of Civil Code Book III mentioned above is very clear that as his employer, KAYIBANDA Joseph shall be liable of the acts of his employee made during the employment term, thus to decides the lack of liability of the employer to the acts done by his employee when there is not mandate to do so and when the acts done were not in his responsibility, it is not to apply the legal provision. He also explained that the opinion of the Commercial High Court that of stating that “to do a fault in relating to responsibilities” is not mentioned under the article 260 stated above, and it is not even found anywhere in law; while it is forbidden to add anything to the provisions of the lawmaker. [10] RUSANGANWA Jean Bosco, the counsel states that, except the explanations above, there is a case RP 0054/11/TB/KCY heard by the Lower Court of Kacyiru on 25 January 2012 where NZAYIRATA Donat accepts that he burnt those cars because of his employer bit him in head and in ribs when he deposited the food in the car, which make him angry and burn them. Therefore, he finds that argument of NZAYIRATA Donat shows clearly that what he did, he was at his workplace. [11] RUSANGANWA Jean Bosco, the counsel concluded by stating that basing on all those facts, KAYIBANDA Joseph is liable of prejudice because insurance contract does not prevent the liability of third parties. Thus, KAYIBANDA Joseph is legally taken as guarantor of NZAYIRATA Donat, his employee. [12] MUNDERERE Léopold, the counsel states that the arguments of SORAS AG Ltd lacks merit because among duties of NZAYIRATA Donat was charged to KAYIBANDA Joseph, it was not included that of burning the cars of M.T.S. Ltd. It added that if SORAS AG Ltd confirms

that, shall provide the evidence. He kept stating that article 260 of Civil Code Book III SORAS AG Ltd refers to, misinterpret its provision and KAYIBANDA Joseph explained well to the first instance where he raised doctrines and case law of the Supreme Court confirming that employer (the Government) is not liable when the offenders, even they are your employee, they committed them without employer's instructions (The Government). Therefore, he finds

Page 5

that even KAYIBANDA Joseph is not liable because he did led NZAYIRATA Donat to commit those criminal acts against M.T.S. Ltd. [13] MUNDERERE Léopold, the counsel states that when SORAS AG Ltd accepts that NZAYIRATA Donat is not an employee of M.T.S. Ltd, as written in the letter of 26 January 2012, and that SORAS AG Ltd is the insurer and that it has paid insurance premiums, shall pay when the purpose of insurance occurs, based on the contract with M.T.S. Ltd. [14] NDAYISABA Fidèle, the counsel states that argument of SORAS AG Ltd has no merit because as explained by the court, among responsibility of NZAYIRATA Donat was not included that of burning the cars, he rather did the acts beyond his responsibilities. He added that in the deliberation of the appealed case, the Commercial High Court based on the law scholars where they states that employer is not liable of the acts of his employee when he did them beyond his actual responsibility. It decided that KAYIBANDA Joseph is not liable of the acts done by NZAYIRATA Donat. Thus he find that SORAS AG Ltd misuses the article 260 of Civil Code Book III because in its paragraph 3, it explains well that employer is liable for the acts done by the employee when he is accomplishing his duties. VIEW OF THE COURT [15] Article 260 of Civil Code Book III paragraph 3, stipulates that employers are liable for the acts done by the employees when they work within the responsibility. [.....]". [16] Article 33 of Civil Code Book III used when SORAS AG Ltd and M.T.S. Ltd made the insurance contract provides that "Contract made in accordance with the law shall be bind within parties. They only are revoked at the consent of the party or for reason based on law. They shall be performed by good faith". [17] Article 11, paragraph one of the Organic-law no 20/75 of 20/06/1975 related to the insurance provides that "the insurer insured the accident to occurs on the insured provides in the contract". [18] Article 46 of Common terms and conditions of vehicle insurance against fire, theft and property damage, provides that 'the company provides designated vehicle (chassis, bodywork, including fixtures necessary for the normal use of the vehicle) against fire, damage by fire, explosion, jets of flame and lightning, in wherever the event occurs and whatever the cause, with the exception, however;

- a) damage caused by a loading inflammable or explosive,
- b) damage caused by earthquake or volcanic eruption
- c) damage to electrical devices due to their only operation
- d) of the exclusion resulting from the general condition of Title II

Page 6

[19] The Supreme Court find that in this case M.T.S. Ltd requesting that SORAS AG Ltd shall be ordered to execute its duty from the insurance contract made on 11/1/2011 vehicle insurance policy against fire, theft and property damage. [20] Concerning the argument of SORAS AG Ltd that s refers to the provision of Article 260 of Civil Code Book III paragraph 3, relates to the fault committed willingly or as related, shall not guaranty the acts of NZAYIRATA Donat on the cars of M.T.S. Ltd in litigation because is the worker of KAYIBANDA Joseph, and this is worker of M.T.S. Ltd, Supreme Court find that article not relates to this case because the requests of M.T.S. Ltd relates to the liability of SORAS AG Ltd from insurance contract mentioned above. Then, there is no provision form the contract stipulating that SORAS AG Ltd shall not guaranty the prejudice from the worker of M.T.S. Ltd or the worker of the staff of M.T.S. Ltd, thus based to article 64 law n°45/2011 of 25/11/2011 governing contracts, and article 11, paragraph one of the Organic-law no 20/75 of 20/06/1975 related to the insurance and article 46 of Common terms and conditions of vehicle insurance against fire, theft and damage, relates to special conditions of insurance against fire, SORAS AG Ltd shall execute its duties of guarantying the accident occurred to the cars insured. [21] The Supreme Court find that even that article should be used by extraordinary, only the victim shall request to court to uses that article, because of the employer of the defaulter from whom is victim1, refused to pay the prejudice from his employee then SORAS AG Ltd cannot request on this case to be used the provision of the article 260, paragraph 3 Civil Code Book III because is not victim of the fault committed by NZAYIRATA Donat, employee of KAYIBANDA Joseph. [22] Then, Supreme Court find that, as explained by the High Commercial Court, shall be refers to the provision of the article 260, paragraph 3 Civil Code Book III only when the worker caused prejudice to other or others property, during his work, when is mentioned on the case RP 0054/11/TB/KCY decided by the lower court of Kacyiru on 25/1/2012 that NZAYIRATA Donat , sentinel of KAYIBANDA Joseph, accepted to burn those cars because his employer bit him, and him (NZAYIRATA Donat) because of angry burn them, thus his act has no link with his responsibilities (to ensure the security of the property) that he done this willingly on his own reasons2. ‘ [23] Except all that, the Supreme Court find that even if NZAYIRATA Donat was worker of M.T.S. Ltd, would not exempt to SORAS AG Ltd to guaranty the prejudice because article 12 the Organic-law no 20/75 of 20/06/1975 related to the insurance provides that “insurer guaranty the loss and the prejudice caused by the person’s the insured is liable refers to the provision of the Civil Code without considering the nature of fault made by those persons and their quantity. 1Le principe de la responsabilité civile du commettant a pour but de protéger les tiers contre l’insolvabilité de l’auteur du préjudice en leur permettant de recourir contre son employeur, il s’ensuit que seule la victime a qualité pour mettre en cause et invoquer contre lui (l’employeur), à son profit, les dispositions de l’article 1384, alinéa 5 du code civil français (pendant de l’article 260, alinéa 3 de notre code civil, livre III), Civ. 6 févr. 1974 : D. 1974. 409, 28 oct. 1987 : Bull. civ. II, n° 214, in code civil, édition 2000, Dalloz, Paris, 2000, P. 1039. 2Le commettant ne s’exonère de sa responsabilité que si son préposé a agi hors des fonctions auxquelles il était employé, sans autorisation, et

à des fins étrangères à ses attributions”, Ass. Plén. 19 mai 1988 : D. 1988. 153, in code civil, édition 2000, Dalloz, Paris, 2000, P. 1039. “Que dès lors, après avoir constaté que la cause des dommages résidait dans un acte délibéré, étranger à ses fonctions, accompli parà des fins personnelles, la Cour d’appel a décidé à bon droit que la responsabilité de la société n’était pas engagée”, Ass. Plén. 17 juin 1983

Page 7

- [24] Based to the explanations given, the Supreme Court find that has no merit the reason given by SORAS AG Ltd, thus shall pay to M.T.S. Ltd the prejudice, then after shall replace M.T.S. Ltd in related to the rights of following the person caused the payment for his acts³.
- b. Whether the Commercial High Commercial default to decide the solidarity between SORAS AG Ltd and NZAYIRATA Donat for paying M.T.S. Ltd [25] RUSANGANWA Jean Bosco, the counsel states that the Commercial High Court ordered to SORAS AG Ltd to pay 42,000,000 Rwf, in solidarity with NZAYIRATA Donat when there were different and lack of motivation for that solidarity. Thus he find that Commercial High Court didn’t respect the provision of article 141 of the Constitution of the Republic of Rwanda was adopted by of 4/6/2003, as amendate till, article 147 of law n 21/2012 of 14/6/2012 ° relating to the civil, commercial, labour and administrative procedure and not considered the provision of article 100 of Civil Code Book III. [26] MUNDERERE Léopold, the counsel states that argument of SORAS AG Ltd has no merit because is the one forced intervened NZAYIRATA Donat on the case, the it want to pay in solidarity with him because he caused prejudice M.T.S. Ltd. He continue to said that if SORAS AG Ltd not consider that NZAYIRATA Donat help it to pay its prejudice, that it shall execute its obligation of paying M.T.S. Ltd all the prejudice insured. [27] NDAYISABA Fidèle, the counsel states that argument of SORAS AG Ltd has no merit because NZAYIRATA Donat commit a fault of burning cars, then based to article 258 of Civil Code Book III shall be liable to its acts. He continue to say that when SORAS AG Ltd received insurance premium, to order it to pay is not contrary to the law because article 46 of contract Common terms and conditions of vehicle insurance against fire, theft and damage with them mention how it shall pay, failure to execute is the endue payment without reason, not forgetting that t forced intervene KAYIBANDA Joseph and NZAYIRATA Donat, then court find that they shall not be pay in solidarity M.T.S. Ltd, shall be ordered to pay itself. VIEW OF THE COURT [28] Article 100 of Civil Code Book III used when SORAS AG Ltd and M.T.S. Ltd made insurance contract provides that “Solidarity is not ordered, shall be mentioned openly. That principle shall be abandoned when the solidarity s provided by the law “. [29] Article 14, paragraph 2 of the Constitution of the Republic of Rwanda was adopted by of 4/6/2003, as amendate till, provides that “any case decided shall includes the motivation refers to and shall be wrote in all its provision [.....]“. [30] Article 147, paragraph 2, 3 and 4 of law no 21/2012 of 14/6/2012 relating to the civil, commercial, labour and administrative procedure provides that “The judgment must contain ground in law and in fact. It must justify the rejection of the evidence produced and the value it 3Article 32 paragraph 1 of Decree Law n° 20/75 of 20/6/1975 relating to insurance provides that the insurer who paid insurance

damages, replaces the insured in accordance with damages he paid regarding responsibility of third parties who made the insurer to pay because of their acts.

Page 8

attribute to the different types of evidence produced in court. The judgment shall indicate all the legal provisions it was based on in deciding the case". [31] Article 63 of Civil Code Book III used when SORAS AG Ltd and M.T.S. Ltd made insurance contract provides that "Contract produce effects between concerned party only, shall not bind a third party but produce interest to others only as provides by article 21". [32] The Supreme Court find that is mentioned on the paragraph 13 of the appealed case that based to article 258 of Civil Code Book III, High Commercial Court decided that SORAS AG Ltd shall in solidarity with NZAYIRATA Donat pay to M.T.S. Ltd (in solidum) 42.000.000 Rwf but didn't explain why of that solidarity ordered, thus it didn't respect the provision of article mentioned above. [33] The Supreme Court finds impossibility of that solidarity in this case because what requested by M.T.S. Ltd to SORAS AG Ltd the payment from the insurance contract between them where is not party NZAYIRATA Donat. Except that, on this case SORAS AG Ltd has no capacity to request that NZAYIRATA Donat shall be ordered to pay M.T.S. Ltd based to the fault committed willingly when M.T.S. Ltd requested that SORAS AG Ltd be ordered to pay insurance damage based to insurance provides the payment of insurance interest based to insurance contract. Then, SORAS AG Ltd has capacity and interest to request that NZAYIRATA Donat be ordered to pay the prejudice based to his fault committed willingly but after the payment of the insurance damages and through recourse case, based to article 32 Organic-law no 20/75 of 20/06/1975 related to the insurance mentioned above. [34] Based on given explanations, the Supreme Court find that refers to article 63 of Civil Code Book III, the Commercial High Court should not order NZAYIRATA Donat to pay the prejudice because of the accident of the cars insured by SORAS AG Ltd that should not ordered to SORAS AG Ltd to be in solidarity with NZAYIRATA Donat on paying to M.T.S. Ltd (in solidum) 42,000,000 Rwf, thus it not considered the provisions mentioned above. C. Whether M.T.S. Ltd shall be given the damages requested [35] MUNDERERE Léopold, the counsel states that SORAS AG Ltd shall be ordered to repair the cars "Toyota Hilux" on 23.290.170 Rwf as find on the repair estimate either to pay its insured value equal to 22.000.000 Rwf and to repair the car "Infinity" on 37.161.806 Rwf as find on the repair estimate either to pay its insured value equal to 20.000.000 Rwf. [36] MUNDERERE Léopold, the counsel continues stating that M.T.S. Ltd request that SORAS AG Ltd be ordered to pay 52,800,000 Rwf paid on the rent of other cars for doing work from 30/10/2011 till 30/6/2014, asked that the amount shall continue to increase till final

judgment.

[37] MUNDERERE Léopold, the counsel concludes stating that MTS Ltd asked also that SORAS AG Ltd be ordered to reimburse the case follow up fees and the attorney fees equal to 10% of the indemnity allowed by court and order it to pay 1.000.000 Rwf each month of "astreinte".

Page 9

[38] RUSANGANWA Jean Bosco, the counsel rejected the damages of SORAS AG Ltd M.T.S. Ltd. VIEW OF THE COURT [39] Article 27 Organic-law no 20/75 of 20/06/1975 related to the insurance provides that “property insurance is indemnity contract. Value of indemnity shall never be more than the value of insured object at the time of accident“. [40] Article 45 of Civil Code Book III used when SORAS AG Ltd and M.T.S. Ltd made insurance contract provides that “the debtor shall, if necessary, to pay damages from the non- execution of the obligation or to delay the execution, if he cannot defend his lack of responsibility on the execution, it shall be fair. [41] Article 47 of Civil Code Book III used when SORAS AG Ltd and M.T.S. Ltd made insurance contract provides that “The aggrieved party has right to damages based on his/her expected interests calculated in accordance with: in general, losses in the value by the aggrieved party based on the other party's obligations caused by non performance or inadequacy, except the exempted and followed changed. [42] Article 258 of Civil Code Book III provides that Any acts of a person caused prejudice to others required to the defaulter to pay the prejudice. [43] For damages related to car damaged, Supreme court find in the paragraph 13 of the appealed case, High commercial Court ordered SORAS AG Ltd to pay to M.T.S. Ltd 42,000,000 Rwf equal to amount of the car prejudiced. [44] The Supreme Court finds that when party didn't determine the value of the cars insured on the day of the accident that SORAS AG Ltd not react to what M.T.S. Ltd request, SORAS AG Ltd shall give to M.T.S. Ltd indemnity equal to the amount of the car insurance. Thus SORAS AG Ltd shall pay to MTS Ltd 42.000.000 Rwf equal to the amount of the car insurance. [45] For 52,800,000 Rwf of the rent of car requested by M.T.S. Ltd, Supreme Court find that High Court allow to M.T.S. Ltd 19.360.000 Rwf related to the rent of two cars from January 2012 till November 2012. [46] The Supreme Court find that M.T.S. Ltd continue to rent the two cars (Toyota Hilux RAB 207 V on 910.000 each month and Toyota RAV 4 RAB 838 P on 850.000 each month) till June 2014 because SORAS AG Ltd failure to execute its obligation from insurance contract, then based to article 45 and 47 of Civil Code Book III mentioned above and as mentioned on the receipt submitted by M.T.S Ltd, SORAS AG Ltd shall reimburse 33.440.000 Rwf on the rent of car from December 2012 till June 2014, with 19.360.000 Rwf allowed by High Commercial Court, the total is 52.800.000 Rwf. [47] For the amount of procedural and advocate fees equal to 10% of the allowed indemnity, Supreme Court find that the requested amount by M.T.S. Ltd was so much, thus based to article 258 of Civil Code Book III, on it appreciation, allow 300.000 Rwf of case follow up and 500.000

Page 10

Rwf attorney fees, with 300.000 Rwf allowed by the Commercial High Court, the total is 1,100,000 Rwf. [48] For the penalty MTS Ltd asked for SORAS AG Ltd of forcing to execute, the Supreme Court find base to article 216 law no 21/2012 of 14/6/2012 relating to the civil, commercial, labour and administrative procedure, that penalty s necessary because of long period it asked that amount but allow by its appreciation that SORAS AG Ltd shall forced to pay M.T.S. Ltd 500,000 Rwf each month as long as it delay to pay the indemnity ordered on this case while to be

1,000,000 Rwf because is too much.

- d. Whether KAYIBANDA Joseph may be granted for the money he is requesting [49] NDAYISABA Fidèle, the counsel stated that based to article 167 law no 21/2012 of 14/6/2012 relating to the civil, commercial, labour and administrative procedure, asked to court that SORAS AG Ltd shall be ordered to pay to KAYIBANDA Joseph indemnity of case follow up and attorney fees on appeal level equal to 800.000 Rwf. And in conclusion requested that appealed case shall not be changed except for the indemnity requested only. [50] RUSANGANWA Jean Bosco, the counsel stated that SORAS AG shall not pay any amount to KAYIBANDA Joseph. VIEW OF THE COURT [51] Article 258 of Civil Code Book III provides that Any acts of person caused prejudice to other required the defaulter to pay damages. [52] The Supreme Court finds that KAYIBANDA Joseph shall be paid the case follow up fees and attorney fees, which mean 300.000 Rwf of case follow up and 500.000 Rwf of attorney fees, with 1.000.000 Rwf allowed by the High Commercial Court, the total is 1.800.000 Rwf. III. THE DECISION OF THE COURT [53] Decides that appeal of SORAS AG Ltd has no merit. [54] Decides that appeal of M.T.S. Ltd crosse appealed to the one of SORAS AG Ltd has merit. [55] Decides that appeal of KAYIBANDA Joseph cross appealed to that of SORAS AG Ltd has merit. [56] Orders SORAS AG Ltd to pay to M.T.S. Ltd 42,000,000 Rwf equal to the value of the cars insured. [57] Orders SORAS AG Ltd to pay M.T.S. Ltd 52,800,000 Rwf for rent of cars from December 2011 till June of 2014.

Page 11

- [58] Orders SORAS AG Ltd to pay M.T.S. Ltd 300,000 Rwf procedural and 500,000 Rwf of advocate fees, plus 300,000 Rwf given by the Commercial High Court, and the total is 1,100,000 Rwf. [59] Orders SORAS AG Ltd to pay M.T.S. Ltd 500,000 Rwf each month within its delay to pay the damages ordered in this case. [60] Orders SORAS AG Ltd to pay KAYIBANDA Joseph 300,000 Rwf of procedural and 500.000 Rwf of advocate fees, plus 1,000,000 Rwf given by the Commercial High Court, and the total is 1,800,000 Rwf. [61] Orders SORAS AG Ltd to pay KAYIBANDA Joseph 50,000 Rwf each month within its delay to pay the damages as ordered by the Commercial High Court. [62] Orders SORAS AG Ltd to pay court fees.

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