

RWANDA / JUDGMENT

SORAS Ltd v. ITEX s.a.r.l

RLR V.2 - 2015

COURT

Supreme Court

DECIDED

23 May 2014

CASE / FILE NUMBER

RCOMA 0148/11/CS

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- Source: Amategeko
- Section: Decisions (Judgements)
- Date: 2014-05-23
- Case/document no.: RCOMA 0148/11/CS
- Collection: Supreme Court

Text

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SORAS Ltd v. ITEX s.a.r.l [Rwanda the SUPREME COURT – RCOMA 0148/11/CS (Mutashya, P.J., Gatete and Gakwaya, J.) 23 May 2014] Transport Law – The transport contract – The evidence in the contract of transport – The contract of transport is proven with all evidences provided for by the law if they are related to goods; either with the document of lading – The law of 19/01/1920 relating to mandate in the commerce of transporters, the article 10. Transport Law – The transport contract – The liability of transporters – The transporter is liable for what were damaged or the lost in case he/she does not prove that the damage, the lost or the accident resulted from another ground beyond his/her control to which he/she cannot be held liable – The law of 19/01/1920 relating to mandate in the commerce of transporters, article 18. Transport Law – Compensating damages for insurance – The insurer subrogating the of the insured in his/her responsibility – The insurer compensated the damages for the insurance; it replaced the one it insured, in the amount of damages it paid, in the rights and suing the third parties who made it to pay due to their acts – The decree law no 20/75 of 20/06/1975 relating to insurance article 32 paragraph 1. Contract Law – Calculation of the interests on the principal amount – The time they start to be calculated – If the breach of the contract is related to the failure to pay money, the

interests start to be calculated from the day on which the money would have been paid deducting what the party which breached the contract had rights to – The no45/2011 of 25/11/2011 regulating the contracts, article 144. Facts: SORAS Ltd filed a claim against ITEX s.a.r.l before the Commercial High Court arguing that the latter ignored the insurance contract that OCIR-THE made with the Company of Transport TACT Ltd. Afterwards, TACT had agreed with ITEX Ltd to transport the tea of OCIR-THE. The vehicle which carried the tea, when it reached in Kenya, got an accident and the tea it carried got damaged. TACT Ltd has requested SORAS Ltd to compensate for the value of the tea it has insured, SORAS Ltd did it, and it also it subrogated TACT Ltd in its rights of suing ITEX s.a.r.l for the loss it suffered from the fact that ITEX s.a.r.l did not carry the luggage up to where it has to deliver them. The Commercial High Court declared the claim of SORAS Ltd baseless. SORAS Ltd appealed before the Supreme Court arguing that the Commercial High Court ignored the evidences it revealed proving that there has been the contract of transport of the tea of OCIR-THE between ITEX s.a.r.l and TACT Ltd ITEX s.a.r.l argued that among the evidence revealed, there is “trucking bill of lading” proving that the transporter was TACT Ltd and it was insured and even SORAS Ltd has already paid OCIR-THE its tea. It said again that SORAS Ltd did not prove that the vehicle which got an accident was for ITEX s.a.r.l, and even if it may be for the latter, this was not sufficient for it to be held liable for the damaged tea since there is no transport contract between ITEX s.a.r.l and TACT Ltd.

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ITEX s.a.r.l filed a cross appeal requesting SORAS Ltd to be ordered pay to the former the moral damages for its continuous baseless involvement in the court proceedings, the procedural and the advocate fees. SORAS Ltd also requested ITEX s.a.r.l to pay to it the interests calculated on 18% of the money it paid to TACT Ltd, calculated form the date on which ITEX s.a.r.l it received the notice. It also requested the procedural and advocate fees. Held: 1. The contract of transport is not solely proven by a written document, it may be even proven by all evidences provided for by the law as the invoices made between the transporter and the one whose goods are transported, the certificate of international transport by road, the quantity of kilograms of goods to be sent to the receiver must be equal to the goods loaded. It is evident that TACT Ltd and ITEX s.a.r.l made the contract of transport of the tea of OCIR-THE weighting 49.418 kg and it was paid for that transport (4,448 \$).

2. The transporter is liable for the damaged in case he/she does not prove that it resulted from another ground beyond his/her control to which he/she cannot be held liable. The evidences revealed demonstrate that TACT Ltd and ITEX s.a.r.l made the contract of transport of the tea of OCIR-THE.
3. The insurer who paid the damages of insurance, he subrogates the insured for the amount of the damages it has paid. If SORAS Ltd has paid TACT Ltd 20,700,150 FRW, SORAS Ltd has right to subrogate TACT Ltd for the amount of damages it paid. SORAS Ltd, indeed, has right to request ITEX s.a.r.l 20,700,150 FRW it paid to TACT Ltd.

4. The interests for delay payment, they are paid and calculated basing on the rate accepted by the National Bank. Those interests are calculated from the date on which the one who requested them has given notice to the one who has to pay them. Appeal lacks merit. Judgment appealed is changed. Court fees to the defendant. Statutes and statutory instrument referred to: The Law no45/2011 of 25/11/2011 regulating the contracts, article 144. The law of 19/01/1920 relating to mandate in the commerce of transporters, article 18. The Law of 30/07/1888 relating to contracts and contractual obligations, article 431 and 432. The Decree law no 20/75 of 20/06/1975 relating to insurance, article 32 paragraph 1.

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] SORAS filed a claim against ITEX s.a.r.l before the Commercial High Court stating that it made the insurance contract of the tea with the transport company named TACT Ltd (Trans- Africa Container Transport Ltd), later after TACT Ltd has given to ITEX Ltd the tea of OCIR- THE so that it may carry it, the vehicle which carried it when it reached Kenya got an accident and the tea got damaged.

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[2] After that TACT Ltd requested SORAS Ltd to compensate that tea it has insured, SORAS Ltd compensated TACT Ltd for the value of the damaged tea amounting to 20,700,150 FRW, and SORAS immediately subrogated TACT Ltd in the right of suing ITEX s.a.r.l for that prejudice suffered due to the fact that it failed the to deliver the luggage where they were supposed to be delivered, which SORAS Ltd claimed from ITEX s.a.r.l. [3] The Commercial High Court declared the claim of SORAS Ltd baseless, it decided also that the counter claim of ITEX s.a.r.l for requesting for the moral damages, was not admitted since it was filed irregularly after the closure of debates. [4] SORAS Ltd was not satisfied with the decision of that case, and it appealed before the Supreme Court arguing that the Commercial High Court ignored the evidences revealed proving that there has been, between ITEX s.a.r.l and TACT Ltd, the contract of transport of the tea of OCIR-THE which got damaged, it instead stated that those evidences did not prove it and even the invoices of 22/3/2010 that ITEX s.a.r.l made for TACT Ltd do not prove that it requested the payment for the transport of the tea of OCIR-THE. ITEX s.a.r.l lodged a cross appeal requesting that SORAS Ltd should be ordered to pay the damages for its continuous baseless involvement in the court proceedings, the procedural and lawyer's fees. [5] The case was publically heard on 15/04/2014; SORAS Ltd represented by RUZINDANA Ignace, the counsel while ITEX s.a.r.l was represented by NDAGIJIMANA Emmanuel, the counsel. II. ANALYSIS OF LEGAL ISSUES

- a. Knowing whether there has been the contract of transport between ITEX s.a.r.l and TACT Ltd, which may allow SORAS Ltd, in the place of TACT Ltd, to request ITEX s.a.r.l the value of the damaged tea due to the accident. [6] Ruzindana Ignace, the counsel says that as it is demonstrated in the paragraph 5 of the judgment appealed against, the Commercial High Court said that the evidences on which SORAS Ltd bases its claim is the statement made by

the Police of Kenya which revealed the name of Bisamaza ITEX as the one who declared to it the damaged luggage which were carried from Rwanda to Mombasa, the invoices of 22/3/2010 of 4.448 USD, that ITEX s.a.r.l made to TACT Ltd requesting to pay the transport of the tea of OCIR-THE mentioned in this case and in the letter 2/2/2010 that Twagirumukiza Benoît, the “broker” of TACT Ltd wrote to SORAS Ltd, but that court realized that all these evidences do not reveal that between ITEX s.a.r.l and TACT Ltd there has been a contract of transport of the tea of OCIR-THE which got damaged, which SORAS Ltd has compensated, and now it is claiming the restitution of the money it compensated for it. [7] Ruzindana Ignace, the counsel explains that for the court to have decided so, the Commercial High Court contradicted itself since it decides that the invoice of 22/3/2010 of ITEX s.a.r.l relates to the tea of OCIR-THE mentioned in this case, and finally came up with the decision that there was no evidence revealing that there has been the contract of transport of the tea of OCIR-THE which got damaged, between ITEX s.a.r.l and TACT Ltd. He explains that the invoice of 22/3/2010, ITEX s.a.r.l made to TACT Ltd requesting the latter to pay the transport of

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the tea, was not the evidence proving it, while this proves that the Commercial High Court did not enough analyze it, since in the pleadings, nowhere ITEX s.a.r.l has at least said that the tea which deserved to be paid on the invoice of the mentioned, related to other transport than that of the tea of OCIR-THE. He explains again that 4.448 USD was the money for the transport, it was not the value of the tea more importantly that ITEX s.a.r.l could not request the payment for the tea from TACT Ltd, that ITEX s.a.r.l failed to prove the owner of the tea that its vehicle carried, even except that ITEX s.a.r.l could not take the insurance of the tea since it was insured by TACT Ltd, it enough reveals that it was the tea of OCIR-THE since the quantity of the tea mentioned on “the letter of transport” correspond to those that TACT Ltd has given to it, thus he realizes that these evidences were sufficient, it was not necessary that there should be the written contract, that’s why ITEX s.a.r.l has to pay back to TACT Ltd 20.700.150 Frw it paid to SORAS Ltd due to the damaged tea in the accident occasioned by its vehicle. [8] With regard to the vehicle which got an accident, Ruzindana Ignace, the counsel says that what is stated in the judgment appealed against in the paragraph 5 on its page 4 that the vehicle was proven to be for ITEX s.a.r.l, this does not mean that it may be held liable for the obligations of transport since it is possible that TACT Ltd may be the transporter but the work of transport used the vehicle of ITEX s.a.r.l or for any one, in case they agree upon in the particular contract of the transport, was not right since in its pleadings, ITEX s.a.r.l did not say that its vehicles were used by TACT Ltd that’s why it made the invoice of 22/3/2010 requesting TACT Ltd to pay or it shows the vehicle which was leased and the value for lease, thus the he realizes that the Commercial High Court has based its decision on what has not been revealed in the hearing. [9] Ndagijimana Emmanuel, the counsel says that except when ITEX s.a.r.l and TACT Ltd work together in many works, that invoice of 22/3/2010 is the invoice of the tea that ITEX s.a.r.l carried for TACT Ltd at 4.448 USD, which is different to the tea mentioned in this case valued at 20.700.000 Frw. He goes on saying that SORAS Ltd does not prove that the vehicle which got an accident is for ITEX s.a.r.l, and even if it was for the latter, this

could not be enough for it to be held liable for the damaged tea since there was no contract of transport between ITEX s.a.r.l and TACT Ltd. [10] Ndagijimana Emmanuel, the counsel explains that “the letter of transport” reveals the transporter and the owner of the tea, thus he realizes that OCIR-THE cannot accept that the transporter carries its tea without taking the insurance. He goes on saying that the transporter is TACT Ltd while it has taken the insurance, even SORAS Ltd has paid to OCIR-THE its tea which got damaged, thus he realizes no reason which may involve ITEX s.a.r.l in the contract made between TACT Ltd and SORAS Ltd. He concluded saying that if ITEX s.a.r.l was the transporter would have taken the insurance since it could not take the risk by sending its vehicle without the insurance. THE VIEW OF THE COURT [11] The article of 19/01/1920 relating to mandate in commerce and transporters provides for that “the contract of transport is proven with all evidences provided for by the law as for the goods where the documents for the loading are used”.

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[12] The article 431 of the civil code book III provides for that “they (the transporters by road or water) are not only responsible for what have been entrusted with them in the boat or in a vehicle, but also for what have been entrusted with them within the room or within the shop to put them within the boat or within the car”. [13] The article 432 of the civil code book III provides for that they “(the transporters by road or water) are responsible for what have been entrusted with them and get lost and damaged, unless they prove that they were lost or damaged due to the unforeseeable event or force majeure”. [14] The 18 of the law of 19/01/1920 relating to mandate in the commerce of transporters, provides for that transporter is held liable for what has been damaged or lost by the accident which may occur for whom he/she carries unless he/she proves the damage or the accident resulted from another cause beyond his/her control to which he/she cannot be held liable”. [15] The article 32, paragraph 1 of the decree law of 20/06/1975 relating to the insurance provides for that “the insurer who compensated for the damages of insurance, subrogates the insured, for the amount of the compensations it paid, to all rights against the third parties who made him/her to pay due to their acts. [16] With regard to the contract of transport between TACT Ltd and ITEX s.a.r.l, the Supreme Court realizes that in the file of this case there is the statement of the police of Kenya (police station MTITO ANDEI) of 1/3/2010, where Mr BISAMAZA ITEX declared what were lost when the car Mercedes Benz which has the RAB 691K/ RL 0707 got an accident. It realizes that in the file there was the invoice of 22/3/2010, which ITEX s.a.r.l made for TACT Ltd, requesting the latter to pay 4.448 USD for the transport of 49.418 Kg of black tea it carried from Kigali to Mombasa (Kenya), and that that invoice sufficiently proves what was written in the international trucking bill of lading n° 157/2010 of 2/2/2010, where the kilograms of tea which had to be delivered in Mombasa to BAHARI (T) Co Ltd (destination) were 49.418 Kgs as it is in the list of colisage n° 029/2010 of 2/2/2010 that TACT Ltd has sent to BAHARI (T) Co. Ltd on 19/2/2010 and SORAS Ltd, the insurer on 05/04/2010. Furthermore the arrival advice also proves that the mentioned tea was sent to BAHARI (T) Co. Ltd. [17] Basing on what has been mentioned

above, the Supreme Court realizes as provided for by the article 10 of the Law of 19/01/1920 relating to mandate in the commerce of transporters where it decides that the contract of transport is proven with all evidences provided for by the law, all those evidences are mentioned in the previous paragraph, they clearly prove that TACT Ltd and ITEX s.a.r.l made a contract of transport of the tea of OCIR-THE weighting 49.418 Kg which had to be sent to Mombasa to BAHATI (T) Co. Ltd and that ITEX s.a.r.l paid to ITEX s.a.r.l 4.448 USD for that transport of the tea, thus what is said by ITEX s.a.r.l that the only written contract of transport can prove it, is baseless. [18] With regard to the value of the tea sent to Mombasa, the Supreme Court realizes the document which is in the file, "called the compensation proposal" of 19/7/2010, proves that its price was 143.792 USD, that's to mean 82.392.816 FRW of that of that time, thus what is said by ITEX s.a.r.l that 4.448 USD, it revealed in the invoice of 22/3/2010, which is the value of the tea that was sent to Mombasa, that it has no connection with the tea mentioned in this case, which is not true since 4.448 USD is the value of the transport of the tea as demonstrated above.

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- [19] With regard to 20.700.150 Frw that SORAS requests ITEX s.a.r.l to pay, the Supreme Court realises that in case it is evident that SORAS Ltd paid to TACT Ltd that amount of money on 22/7/2010 by cheque n° BB 03920994 (of the Bank of Kigali) since the OCIR-THE requested it to compensate its tea which was damaged in the accident, SORAS Ltd as insurer has the right of subrogating TACT Ltd the one it insured in the compensations it paid, requesting ITEX s.a.r.l to restitute that money, thus basing on the article 431 and 432 of the civil code book III, basing on the article 18 of the law relating to mandate in the commerce of transporters and on article 32 paragraph 1 of the decree law 20/75 of 20/6/1975 relating to insurance, ITEX s.a.r.l has to pay to SORAS Ltd 20.700.150 Frw. [20] Basing to those explanation, the Supreme Court realizes that that ground for the appeal of SORAS Ltd has basis.
- b. Knowing whether SORAS Ltd deserves the interests on the principal amount of money it requests, the procedural and lawyer's fees. [21] Ruzindana Ignace, the counsel in his court submissions he wrote, he requests that ITEX s.a.r.l be ordered to pay to SORAS Ltd the interests for late payment on 20.700.150 Frw calculated on 18%, from the date ITEX s.a.r.l got the notice. [22] Ruzindana Ignace, the counsel requests again that ITEX s.a.r.l be ordered to pay to SORAS Ltd 1.000.000 Frw for the procedural fees, 500,000 Frw for the lawyer's fees at the first instance level and 500,000 Frw for the lawyer's fees at the appeal level. [23] Ndagijimana Emmanuel, the counsel says that SORAS Ltd may not be provided with the money it requests since it sued the one it could not sue. THE VIEW OF THE COURT [24] The article 144 of the law n°45/2011 of 25/11/2011 regulating the contracts provides for that "if the breach of the contract consists of a failure to pay a sum of money or to render a performance with fixed or ascertainable monetary value, interests are calculated from the time for performance was due less all deductions to which the party in breach is entitled". [25] Basing on that article, the fact that the effect of subrogating is that the one who paid subrogates the one to be paid in rights, in the claims he has as the one to pay, the Supreme

Court realizes that SORAS Ltd deserves those interests, thus ITEX s.a.r.l has to pay the interests to the principal amount of money it requests, on the rate of 7% accepted by the National Bank, calculated from the date on which SORAS Ltd has given the notice to ITEX s.a.r.l, that's to mean on 13/8/2010, as the rate of 18% claimed by SORAS Ltd is excessive, the interests have to be calculated in this way: $20.700.150 \times 7\% \times 1379 \text{ days} = 5,474,481 \text{ Rwf}$. $100 \times 365 \text{ days}$ [26] With regard to the procedural and advocate fees that SORAS Ltd claims, the Supreme Court realizes that the amount it requests is too much, and it provides, in its discretionary power,

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with 300,000 Frw for the procedural fees and 500,000 Frw for the lawyer's fees for both the first instance level and the appeal level, which makes in total 800,000 Rwf. [27] Basing on all those said above, the Supreme Court realizes ITEX s.a.r.l has to pay to SORAS Ltd 20.700.150 Frw for the value of the tea damaged in the accident, 5,474,481 Rwf for the interests on the principal amount of money, 300,000 Rwf for the procedural fees and 500,000 Rwf for the advocate fees, which make in total 26.974.631 Rwf. III. THE DECISION OF THE COURT [28] Decides that the appeal of SORAS Ltd has basis [29] Decides that the judgment n° RCOM 0341/10/HCC rendered on 29/07/2011 by the Commercial High Court changes in all its content. [30] Orders to ITEX s.a.r.l to pay to SORAS Ltd 20,700,150 Rwf of the tea that got damaged in the accident, 5,474,481 Rwf for the interests on the principal amount, 300,000 Rwf for the procedural fees and 500,000 Rwf for the advocate fees, which make in total 26,974,631 Rwf. [31] Orders ITEX s.a.r.l to pay the court fees amounting to 29,150 Rwf.

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Prepared on 12 October 2026 · Esheria