

RWANDA / JUDGMENT

SN BRUSSELS vs. UMWARI

RLR V.1-2017

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SN BRUSSELS vs. UMWARI [Rwanda SUPREME COURT – RCOMA 0007/10/CS (Mugenzi, P.J., Mukamulisa na Rugabirwa, J.) 06/05/2011] The law regulating commercial procedure – The cross – Appeal –The cross-appeal is not limited on the ground which made the first appellant to appeal since nothing prevent that the cross- appeal may regard also other grounds of the judgment, they might have been heard at the first instance – The Law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, article 167. The law regulating civil procedure –The admission of the claim – If the plaintiffs have hired one advocate and filed their claims together, but each of plaintiffs has paid the court fees they violate no law – If there are several co-plaintiffs or co-defendants with same interests, each of them, has the same rights and obligations of the party to the case, arguing that the plaintiffs do not prove the capacity they have since they filed a claim as an association, it has no basis since they didn't call themselves an association or behave like this one, rather each one has been presented in his own person. –The Law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, article 20. The law on the carriage of people by air (international convention of Varsovie) – The law to be referred to, the competent court to be seized – the plaintiff has to

choose the court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination, and within its paragraph two provides for that the procedure shall be governed by the law of the Court seized of the case. The international conventional signed at Warsaw on 12 October 1929 that has been ratified by Rwanda and Belgium, article 28. The damages –The damages together with the lawyer's fees – BRUSSELS AIRLINES as the company that transports the people and goods had the obligation of taking the passengers where they have agreed up on (obligation of result) it has not to refute them –If the carrier does not prove that he/she has done much as possible to get other means to take the passengers where they have agreed up on even if it would be expensive, basing on the damage they suffered due to the carelessness of the carrier who get how to solve their problem and fulfill his obligations, each one of the plaintiffs may get the additional damages. Facts: Umwari Marie Agnes & crts argue that they bought the tickets of the SN BRUSSELS airlines from Kigali in Rwanda to Belgium and for the return. They say that at their return they were surprised of that nuko SN BRUSSELS left them in Kampala and Nairobi instead of taking

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them to Kigali. This made them to sue nuko SN BRUSSELS AIRLINES before the Commercial High Court claiming the damages for its failure to assist them and arranged themselves by the money they spent in Kampala and Nairobi, and the one they spent from there to Kigali while it was not planned. The court decided that SN BRUSSELS pays to them the economic and moral damages together with the lawyer's fees. The plaintiffs appealed to the Supreme Court claiming for the additional damages to those allocated before the previous court arguing that the court of first instance ignored them and allocated to them insufficient damages considering the damage they suffered, they request the court to allocate to each one 15,000 Euros and the lawyer's fees amount to 10% of the latter. SN BRUSSELS AIRLINES lodged a cross-appeal too requesting the court not to admit the plaintiffs' appeal arguing that the case had to be decided basing on the Belgium law the company which transported the passengers is of Belgium origin, it argues that their claims have been illegally filed since they have joined them without the ordonnance of the president of the competent court, and it claims to be paid the procedural damages together with those for being involved within the court proceedings for no ground. BRUSSELS AIRLINES goes on saying that the plaintiffs were seven different people and they filed a claim as an association which has no capacity to lodge a claim. The plaintiffs argued saying that even if the claim that has been file is one for all, no law has been violated in case each one has paid the court fees. BRUSSELS AIRLINES argues that the plaintiffs' claim has prescribed since ct contract of the transport of people and goods which has been made between BRUSSELS AIRLINES and the plaintiff is governed by the Belgium law which provides for that the calim prescribes after one year. About the dmages claimed by the palintiffs, BRUSSELS AIRLINES argues that it cannot pay them due to the force majeure which made the travels Kampala/Nairobi to Kigali became impossible, and says that it accepted to pay back only the money they have bought the tickets for the hindered travels together with what they spent after proving them with the documents of what they spent them

for. Held: 1. The respondent in appeal may lodge a cross-appeal. The cross appeal is not only limited to ground of the appeal of the first appellant, nothing can prevent that the cross appeal may also regard other grounds of the judgment; they must have been heard during the first instance. 2. The fact that plaintiffs have hired one advocate and filed their claims together, but each of the plaintiffs has paid the court fees they violate no law. If there are several co-plaintiffs or co-defendants with same interests, each of them, has the same rights and obligations of the party to the case, arguing that the plaintiffs do not prove the capacity they have since they filed a claim as an association, it has no basis since they didn't call themselves an association or behave like this one, rather each one has been presented in his own person.

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3. Basing on the article 28 of the international conventional signed at Warsaw on 12 October 1929 that has been ratified by Rwanda and Belgium superior to the laws of the countries, provides for that with regard to the jurisdiction of the competent court to be seized the plaintiff has to choose the court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination, and within its paragraph two provides for that the procedure shall be governed by the law of the Court seized of the case. Appeal has merit; The defendant's appeal is baseless. The plaintiffs win the case and the defendant loses the case. The defendant is condemned to pay to each one among the plaintiffs the damages amounting to 3,300,000 Frw. The decision of the judgment appealed against is changed. The court fees are incurred to the defendant. The Statutes and Statutory instrument referred to: The international conventional signed at Warsaw on 12 October 1929 that has been ratified by Rwanda and Belgium, article 28. The Law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, article 167, The Law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, article 20,

Judgment

I. BRIEF BACKGROUND OF THE CASE [1] UMWARI Marie Agnès, GAKWAYA Innocent, GAKIRENDEKWE Panthaléon, NSENGIYUMVA Sylvestre, SENYANA Marie Noel, SOMAYIRE RUBONA Freddy and SPINETTE GÉNÈVIEVE bought the airplane tickets from the company named SN BRUSSELS AIRLINES for Kigali to Bruxelles and for Bruxelles to Kigali, while for the return that company removed the usual travels Entebbe / Nairobi – Kigali, which resulted in that it only took those passengers at Kampala and Nairobi, it argued that it was due to the fact that the Republic of Rwanda has surprisingly stopped its airplane at Kanombe airport which prevented them to take the passengers to that direction. [2] They sued that company claiming the damages for its failure to assist them and arranged themselves by the money they spent in Kampala and Nairobi, and the one they spent from there to Kigali. [3] The Commercial High Court decided that BRUSSELS AIRLINES has to pay the economic damages set as follows: Gakwaya 364,262 Frw, Nsengiyumva 287,174 Frw, Spinette 282,894 Frw, Senyana 247,192 Frw, Gakirendekwe 261,361 Frw, Somayire 261,361 Frw,

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Umwari 261,361 Frw; together with the moral damages amounting to 1,283,939 Frw (worth to 1500 Euros) for each passenger and the lawyer's fees amounting to 1,000,000 Frw. [4] The plaintiffs appealed before the Supreme Court arguing that the court of first instance didn't considered the damage they suffered, claiming that the court may provide with each one 15,000 Euros that they have claimed and the lawyer's fees amounting to 10% for this amount. [5] SN BRUSSELS AIRLINES also lodged a cross appeal arguing that the claims should not have been admitted since they were illegally filed, since the claimants are like an association and that their claims have been joined without the ordonnance of the President of the competent court, and it argued that it ignored the judgment would be decided referring to the Belgium law since BRUSSELS AIRLINES which transported those passengers is from Belgium, and the claim has been lodged after having prescribed according to the law of that country. It argued also that it ignored that the failure to take the passengers to Kigali it was for a force majeure. [6] That company claims to be paid 2,000 Euros for what it has spent within this case including the lawyer's fees, it claims also 1,000 Euros for having been involved within the court proceedings without ground. [7] The case was publically heard on 31/03/2011, the plaintiffs were represented by Me NZAMWITA Toy while Brussels Airlines was represented by Me KAVARUGANDA Julien and Me NIZEYIMANA Boniface, [8] The plaintiffs have started with requesting the court that the cross appeal of SN BRUSSELS AIRLINES may not be admitted since it is not only limited to the moral damages they appealed against while the defendant argued that his cross appeal legal, the court decided that it will examine it together with other issues of the case. II. LEGAL ISSUE OF THE CASE WITH REGARD TO THE CROSS APPEAL OF BRUSSELS AIRLINES [9] The plaintiffs' incident for requesting that the cross appeal of the defendant based up on their appeal may not be admitted since it was not against the entire judgment rather it appealed against the amount of the moral damages they have been given by the court of the first instance, they argued then that the cross appeal may not be against any other issue than those damages. Brussels Airlines realises that nothing can prevent that its cross appeal may be extended to other issues of the entire judgment. [10] According to the provisions of the article 167 of the Law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure as modified and complemented to date it accepts that the respondent may also file a cross appeal nowhere it provides for that the cross appeal will only be limited to ground of the appeal of the first appellant, the court realises that nothing can prevent that the cross appeal may also regard other grounds of the judgment, they must have been heard during the first instance.

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[11] This response go hand in hand even with what is said by the legal scholars who explain that the cross appeal is based on the first appeal, it is made by the respondent at the appeal level, in case he/she finds that he/she is not satisfied with all grounds of the first judgment 1, which means then that what might have not satisfied him/her may not only be what has been appealed against by his/her adverse party. WITH REGARD TO THE WAY THE CLAIM HAS BEEN LODGED BEFORE THE COMMERCIAL HIGH COURT [12] As it argued before the

Commercial High Court, BRUSSELS AIRLINES says that the plaintiffs were seven different people, and they claimed as an association without defining its nature and its capacity to file a claim, and their claims have been joined and registered on one number without having been decided by the ordonnance of the president of the court. [13] The one representing the bailiffs responded that no law has been violated, because even if there has been registered only one claim for all, each one has paid the court fees. [14] The court realises that the fact that the plaintiffs have hired one advocate who took their claims together, while each one of the plaintiffs paid the court fees no law has been violated, these claims have respected the provisions of article 20 of the Law n° 18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure which provides for that “If there are several co-plaintiffs or co-defendants with same interests, each of them, has the same rights and obligations as to these interests”, arguing that the plaintiffs do not prove the capacity they have since they filed a claim as an association, it has no basis since they didn’t call themselves an association or behave like this one, rather each one has been presented in his own person. [15] Therefore the court realises that there is no proven ground with regard to the filing of the claim which may result in the inadmissibility of the claims that have been filed, while arguing that their inadmissibility may base on the fact that they have been joined while it has not been done by the president of the court, this may not be a ground for not admitting the well filed claim, rather there may be a request for the quashing of the judgment, if it is proven that joining the claims in one case without being joined by the president of the court is a defect to the extent of annulling what has been done within the case, which has not been requested by BRUSSELS AIRLINES. 1 “L’appel incident vient se greffer sur l’appel principal, il est le fait de l’intimé qui ne s’estime pas totalement satisfait de la solution des premiers juges.” Reba igitabo cya Melina Douchy-Oudot: “Procédure civile”, 2ème édition, Paris, 2006, page 366, no 638.

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THE ISSUE OF KNOWING WHETHER THE RWANDAN LAW WOULD BE APPLIED WITHIN THIS CASE [16] To argue that the article 19 of its general conditions governing the contract of the transport of people and goods which is made between BRUSSELS AIRLINES and the plaintiff is governed by the Belgium law since that company has the origin from that country, while those general conditions are reminded on the air tickets that the passengers buy even if they may not know them but they make look for them and get them. [17] BRUSSELS AIRLINES based on this and confirmed that the claim filed within the Commercial High Court has prescribed, since the prescription of such claims elapses after one year, basing on the Belgium law. [18] The article 28 of the international conventional signed at Warsaw on 12 October 1929 which has been ratified by both Rwanda and Belgium, is superior to the laws of the countries, within its paragraph one provides that with regard to the jurisdiction of the competent court to be seized the plaintiff has to choose the court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the Court having jurisdiction at the place of destination, and within its paragraph two

provides for that the procedure shall be governed by the law of the Court seized of the case. [19] It is evident that the fact that the plaintiff chose to seize the Rwandan courts as accepted by the above mentioned international convention, it is indisputable that they seized the competent court, the Rwandan law has to govern the procedure, therefore the arguments that the general conditions of that company has to govern, while BRUSSELS AIRLINES also accepts that they might not have got them, has no basis. [20] With regard to the prescription, the defendant argues that it has to be regarded basing on the Belgium law and be decided that that prescription elapses after one year, the article 29 of the Warsaw convention of mentioned above, it explains that the prescription of the claim is two years, the method of calculating the period of limitation shall be determined by the law of the Court seized of the case, therefore the appeal of BRUSSELS AIRLINES requesting for the application of the Belgium law has no basis. WITH REGARD TO THE CLAIMED DAMAGES [21] The plaintiffs appealed to the Supreme Court arguing that the court of first instance didn't consider the damage they suffered and provided with them insufficient damages amounting to 1,500 Euros, and they claim each one of them 15,000 Euros that they have claimed since the get that it is a reasonable damage and they claim the lawyer's fees amounting to 10% of the damages they claim. [22] They explain that the amount of these damages is based on the profound damage they suffered due to BRUSSELS AIRLINES which waited for the day they might come to Kigali and told them that it will not take them there, and it took other passengers to the other airplanes to

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take them to their destinations and it left them, promising them that in case they reach Kampala or Nairobi it would look for other means for them, while at their arrival there, it did not do it to the extent of the problems they got of looking for lodges, the means of paying them and difficultly getting the livings since it was not planned for. They say that it neglected them as if they are not human beings. [23] BRUSSELS AIRLINES argues that it has to pay no damage since it failed to take those passengers to Kigali due to its airplane that has been stopped in Kigali by the Rwandan government while it was the one which could have come to carry the passengers from Nairobi/ Kampala, which has been a force majeure which hindered the travel Kampala/ Nairobi to Kigali, and it accepted to pay back only the money they have bought the tickets for the hindered travels together with what they spent after proving them with the documents of what they spent them for. BRUSSELS AIRLINES denies to have discriminated them from other passengers. [24] The court realises that BRUSSELS AIRLINES as the company for the transport of goods and people it had the obligation of taking the passengers where they have agreed up on (the obligation of result), it may not refute those obligations arguing that there has been force majeure as the Warsaw convention provides for that the carrier is not held liable for damages if he/she proves that he/she did much as possible to prevent the effects of what may be damaged, but as the court of first instance has explained it, that carrier did not prove that he/she has as much as possible to get other means to take the passengers where they have agreed up on even if it would be expensive. [25] With regard to the amount of the reasonable moral damage, considering the damage that they plaintiffs have suffered due to the carelessness of the carrier

who would have looked for how to resolve that problem and fulfills its obligations, the court realises that it may add on the damages provided for by the court of first instance and be provided with 2,000,000 Frw. [26] With regard to the lawyer's fees, the court realises that those fees have to be given to the plaintiffs since they hired a lawyer in this case, but because those they claim amounting to 10% of the damages that they claim is too excessive, the court, within its discretion it provides them with 300,000 Frw for each one at this level to be added on 1,000,000 Frw provided by the first instance court. III. THE COURT DECISION [27] It decides to admit the appeal made by UMWARI Marie Agnès, GAKWAYA Innocent, GAKIRENDEKWE Panthaléon, NSENGIYUMVA Sylvestre, SENYANA Marie Noel, SOMAYIRE RUBONA Freddy and SPINETTE Génèvieve, and the cross appeal of BRUSSELS AIRLINES since they have been filed within legal procedures; [28] It decides that the appeal of UMWARI, GAKWAYA, GAKIRENDEKWE, NSENGIYUMVA, SENYANA, SOMAYIRE RUBONA and SPINETTE has basis on some grounds and that of BRUSSELS AIRLINES has no basis;

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[29] It decides that UMWARI, GAKWAYA, GAKIRENDEKWE, NSENGIYUMVA, SENYANA, SOMAYIRE RUBONA and SPINETTE wins the case while BRUSSELS AIRLINES loses; [30] It condemns BRUSSELS AIRLINES to pay to each one of the plaintiffs mentioned above the damages amounting to 2,000,000 Frw and 1,300,000 Frw for the lawyer's fees which all makes 3,300,000 Frw, if it does not pay it within the period of one month, this money will be taken from its property by the power state; [31] It condemns it to pay 924,000 Frw of the proportional fee amounting to 4% of the total damages it has been condemned for (23,100,000 Frw), if it does not pay it within the period of one month, this money will be taken from its property by the power state; [32] It condemns it to pay the court fees amounting to 41,700 Frw, if it does not pay it within the period of eight days it will be taken from its property by the power state; [33] It states that the decision of the judgment appealed against is changed. .

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