

KIGALI CITY v. MACO MUSONI

[Rwanda COURT OF APPEAL – RADA 00005/2018/CA (Mukanyundo, P.J., Mukandamage and Kanyange J.) October 05, 2018]

Contract – Contract of sale – Movable property – Delivery. – Delivery of movable property (merx) is effected when there is a real handover of the goods or the keys of the building in which they are stored or based on the consent of the parties in case the merx (sold property) cannot be delivered at the time of sale or if the buyer already had it in possession in any other way.

Obligations – Liability – Negligence – A person is liable for the damages caused by those under his care caused as a result of his/her negligence.

Civil procedure – Ground of defence – Force majeure – The party which invokes the force majeure as a defence has the burden to prove it.

Facts: After a tree along Remera - Gishushu road fell on a vehicle Hiace RAA 089 K minibus, the owner sued the City of Kigali in the High Court seeking the cost for repair and damages for loss of profit. The court ruled that the tree belonging to Kigali City damaged the vehicle, therefore, Kigali City is liable for the repair of the damages caused and the damages for loss of profit.

The City of Kigali appealed the case to the Supreme Court, following the reform of the judiciary, the case was transferred to the Court of Appeal. Its grounds of appeal are: the previous court did not examine whether the vehicle, in this case, belongs to the plaintiff or another person, did not analyse the cause of the accident so that it could determine that it was not liable for an accident caused by unforeseen events and beyond its control (cas de force majeure) and lastly that the damages it awarded are unjust.

In his defense, the owner of the vehicle argues that he produced sufficient evidence proving his ownership of the vehicle and no one challenges that ownership, the tree that damaged it belonged to the City of Kigali, it fell because of its owner's negligence because it was old and not properly maintained and that the damages awarded by the previous court should be increased because the vehicle has not been repaired.

Held: 1. Delivery of movable property (merx) is effected when there is a real handover of the goods or the keys of the building in which they are stored or based on the consent of the parties in case the merx cannot be delivered at the time of sale or if the buyer already had it in possession in any other way, therefore even though in the transferring of the vehicle which had the accident between the buyers in different intervals, the names on the registration card "carte jaune" were not changed to the name of the current buyer, it is obvious that the vehicle belongs to the respondent, because he bought it, and it belonged to him at the time of the accident.

2. A person is liable for the damages caused by those under his care in case it was due to his negligence, thus Kigali City is liable for the damages resulting from the accident caused by its tree alongside the road.

3. The party which invokes the force majeure as a defence has the burden to prove it.

**The appeal has merit.
The cross appeal has merit.
Court fees on Kigali City**

Statutes and statutory instruments referred to:

Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, article 12, 152

Law n° 15/2004 of 12/6/2004 relating to evidence and its production, articles 2.

Decree-Law of 30/07/1888 relating to contracts or obligations, (abrogated by the law N° 020/2019 of 22/08/2019 abrogating all laws established before the independence) articles 260

No cases referred to.**Authors cited:**

O. De GRANDCOURT, La responsabilité du propriétaire d'arbres, in Revue Forestière Française. Philippe Le Tourneau, Cyril Bloch, Jérôme Julien, Christophe Guettier, Didier Krajeski, André Giudicelli et Matthieu Poumarède, Droit de la responsabilité et des contrats, Régimes d'indemnisation, Dalloz, Février 2014.

Judgment

I. BRIEF BACKGROUND OF THE CASE

[1] Maco Musoni Oscar Léonce sued the City of Kigali in the High Court seeking damages amounting to 24,450,000 Frw, which included 3,304,000Frw for the repair of his vehicle a minibus Hiace RAA 089 K which had an accident on 09/09/2010 caused by a tree which fell along Remera - Gishushu road and damaged it and 30,000 Frw per day for the lost income, computed beginning 10/09/2010 until the pronouncement of the judgment and also requests for procedural fees.

[2] On 19/04/2013, the High Court rendered the judgment RAD 0108/11 / HC / KIG in the absentia of Kigali City and ruled that a tree belonging to Kigali City fell on Maco Musoni Oscar Léonce's vehicle and severely damaged it as indicated by both the police accident report (procès-verbal d'accident) dated 17/09/2010 and the quotation for repair, thus found it liable for the damage caused to the vehicle in accordance with the provisions of article 260 of the Law of 30/07/1888 relating to contracts or obligations (CCLIII), and in its discretion, it awarded him 14,025,000 Frw for the lost income computed on 15,000Frw per day for 935 days, 3,304,000Frw for its repair and moral damages of 200,000Frw.

[3] Kigali City appealed the rulings in the Supreme Court and the appeal registered on N°RADA 0001/14/SC, later it was transferred in the Court of Appeal as provided by article 105 of the Law N° 30/2018 of 02/06/2018 determining the jurisdiction of the courts and registered on N° RADA 00005/2018/CA.

[4] In its appeal, the City of Kigali argues that the High Court awarded damages to Maco Musoni Oscar Léonce without first verifying whether the vehicle belongs to him or another person, that it did not analyze the cause of the accident because it would have found that it was caused by *force majeure* and therefore it was not liable for the damages and that it awarded unjust and excessive damages, on another hand Maco Musoni Oscar Léonce argued that in previous Court, he produced enough evidence to prove that he was the owner of the vehicle and that no one contested that ownership, that the tree which damaged it is owned by Kigali City and that accident was

caused by its negligence because that tree was old, and that the damages awarded by the High Court should be increased because the has not yet been repaired.

[5] The case was heard in public on 12/09/2018, Kigali City represented by Counsel Kayiranga Rukumbi Bernard while Maco Musoni Oscar Léonce represented by Counsel Bizimana Shoshi Jean Claude.

II. ANALYSIS OF THE LEGAL ISSUES

A. APPEAL OF KIGALI CITY

a. Whether Maco Musoni Oscar Léonce did not have the standing to sue for the damages resulting from the vehicle accident in the High Court.

[6] Counsel Kayiranga Rukumbi Bernard, representing Kigali City argues that the claim for damages filed by Maco Musoni Oscar Léonce in the High Court should have been dismissed because the court should have first examined whether the vehicle belonged to him. He further argues that on page 4 of the police accident report (procès-verbal d'accident) indicate that the vehicle belongs to Ntare Mathias, that what would have proved its owner was its registration card but Maco Musoni Oscar Léonce did not produce it in court, so there is proof of how the vehicle registered on Ntare Mathias, later belonged to Twagirimana Emmanuel could also sell it to Maco Musoni Oscar Léonce as indicated in the contract of sale.

[7] He, therefore, finds that fraudulent manueover may be involved since such a crucial element of evidence was not submitted to the court, whereby Maco Musoni Oscar Léonce claims ownership of a vehicle belonging to someone else, because some times property can be abandoned (bien abandonné), therefore the principle that the ownership of the movable property belongs to the one who possesses it.

[8] Counsel Bizimana Shoshi Jean Claude, representing Maco Musoni Oscar Léonce, states that the case file contains a contract of sale which demonstrates that he bought the vehicle from Twagirimana Emmanuel on 24/07/2010, that even Ntare Mathias who is indicated on the registration certificate as its owner, in his letter dated 09/01/2018 acknowledged that the vehicle is no longer in his possession since he sold it to Niyonzima Théogène, who also sold it to Twagirimana Emmanuel, that it is normal for a person to buy a vehicle registered in another person's name and own it without hindrance. He, therefore, observes that the vehicle which was involved in the accident belonged to Maco Musoni Oscar Léonce and that neither Ntare Mathias nor Twagirimana Emmanuel came to litigate it.

[9] He further argues that the registration certificate is not a piece of evidence to prove the owner of the vehicle even though it may be used, but that a contract of sale is valid when the buyer and a seller agree on the price and the merx, therefore the transfer of ownership of the vehicle in the Rwanda Revenue Authority is only a procedural process purposely to determine who will pay the tax.

DETERMINATION OF THE COURT

[10] Article 2 of the law No 15/2004 of 12/6/2004 relating to evidence and its production, which provides that evidence is the demonstration of the truth of a fact. Article 12, paragraph one of the

Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure providing that the claimant must prove a claim, failing which the respondent wins the case. Concerning the obligations of the seller, article 283 of Code Civil Procedure (CCLIII) provides that the delivery of movable property (merx) is effected when there is a real handover of the goods or the keys of the building in which they are stored or based on the consent of the parties in case the merx cannot be delivered at the time of sale or if the buyer already had it in possession in any other way.

[11] According to the documents contained in the case file, demonstrate that the vehicle, Toyota Hiace RAA 089 K minibus which was involved in an accident on 09/09/2010 is registered in the names of Ntare Mathias, who together with his wife Dusabimana Hawa wrote a letter acknowledging that the vehicle was no longer in their possession because they sold it to Niyonzima Théogène, who also sold it to Twagirimana Emmanuel as indicated by the contract of sale dated 30/09/2005 and it was later bought by Maco Musoni Oscar Léonce as indicated by the contract dated 24/07/2010, thus it was involved in the accident after he had it for almost two months.

[12] The Court finds that although in the transfer of the vehicle Toyota Hiace RAA 089 K between the buyers at different occasions, the names on its registration certificate were not changed, the evidence produced by MACO MUSONI Oscar Léonce proves that it is his because he bought it, it had an accident while it was in his possession with all its documents.

[13] The Court also finds that Kigali City produced no evidence to prove that at the time of the accident, the vehicle had no owner, to adduce that Maco Musoni Oscar Léonce fraudulently claimed its ownership.

[14] Based on the provisions and the motivations given above, the Court finds that Maco Musoni Oscar Léonce has the standing to sue for damages resulting from the accident which the vehicle Toyota Hiace RAA 089 K minibus had, as he did and be awarded them in case they have merit.

b. Whether Kigali City is not liable for damages resulting from the accident caused by the tree which damaged the vehicle of Maco Musoni Oscar Léonce

[15] Counsel Kayiranga Rukumbi Bernard, representing Kigali City argues that the High Court awarded damages to Maco Musoni Oscar Léonce without first examining the cause of the accident, to determine whether Kigali City was indeed liable for the accident caused by heavy rain and heavy storms which caused the tree along the road to fall.

[16] . He further submits that he does not refute that the tree that hit the vehicle belonged to Kigali City, but it should only be liable when it has been proved that it was negligent with its trees, thus what happened was not negligence, but an accident caused by a force majeure which Kigali City could not foresee or control, therefore based on the provisions of article 46 of the Code Civil Book III (CCLIII) which was applicable at that time, Kigali City is not liable for any damages.

[17] Counsel Bizimana Shoshi Jean Claude, representing MACO MUSONI Oscar Léonce argues that the liability of Kigali City is based on the provisions of article 260 of Code Civil Book III (CCLIII) because it was the owner of the tree that damaged his vehicle, it fell due to the negligence of the owner, since it was not well maintained (manque d'entretien). He explains that on the day the accident happened, there was stormy rain, but that there was no natural disaster because all the trees in the city did not fall or any extraordinary damage, but only the old trees are

the ones which fell, even after the accident all old trees were cut and only the young ones were left. He, therefore, finds that the normal wind which blew cannot be considered as a force majeure as emphasized by the legal scholar O. De Grandcourt¹

DETERMINATION OF THE COURT

[18] Article 260, paragraph 1, Decree-Law of 30/07/1888 relating to contracts or obligations, (CCLIII) provides that “A person is liable for the damages caused by those under his care in case it was due to his negligence.”

[19] Both parties agree that a tree that hit Maco Musoni Oscar Léonce’s vehicle Toyota Hiace RAA 089 K minibus belongs to Kigali City as explained above and on that day there was a stormy rain. What they do not agree on is whether the tree falling under the storm wind is considered unforeseen and unavoidable factor (force majeure) which would exonerate the Kigali City from damages resulting from that accident.

[20] Legal Scholars, explain that natural disasters are different from unforeseen and unavoidable causes (cas de force majeure), that the existence of an administrative record proving that there has been an extraordinary rainfall, does not necessarily mean that there was an unforeseen and unavoidable cause, although both have the same effect². They further explain that storm can be unforeseen and unavoidable factor when its effects could not be controlled and it was not possible to predict that it will occur. It must have been a very strong wind or its effects could not be controlled.³

[21] Regarding this case, the Court finds that, apart from only alleging that on 09/09/2010 there was stormy rain which caused the tree along the road to fall, Kigali City did not provide any evidence to prove that it was an unprecedented storm to the extent that the Meteorology service could not forecast it, for its effects to be controlled or if there are other things which were destroyed in that area apart from that tree which fell.

[22] Pursuant to article 260, paragraph 1, of the Decree-Law of 30/07/1888 relating to contracts or obligations, (CCLIII) cited above and on the foregoing motivations, the Court finds, as held by the High Court, Kigali City is liable for damages arising from the accident caused by its tree on the roadside which fell on vehicle Toyota Hiace RAA 089 K minibus, therefore this ground of appeal lacks merit.

c. Whether the High Court awarded Maco Musoni Oscar Léonce unjust damages

¹ O. De GRANDCOURT, La responsabilité du propriétaire d’arbres, in Revue Forestière Française.

² Philippe Le Tourneau, Cyril Bloch, Jérôme Julien, Christophe Guettier, Didier Krajjeski, André Giudicelli et Matthieu Poumarède, Droit de la responsabilité et des contrats, Régimes d’indemnisation, Dalloz, Février 2014, p.749..... “Néanmoins, il n’y a pas d’identité entre l’état de catastrophe naturelle et la force majeure; ainsi, la décision administrative de classement de pluies dans la première catégorie ne vaut pas ipso facto reconnaissance d’un cas de force majeure; mais les effets d’une catastrophe naturelle sont les mêmes que ceux qui résultent d’une circonstance de force majeure”.

³ Op,cit. p. 750... “Le vent sera un cas de force majeure, à la condition qu’il n’ait pas été possible d’en éviter les conséquences, et qu’il n’ait pas été prévisible. Le vent ne sera donc un cas de force majeure que s’il est établi que sa violence a présenté une intensité insolite dans la région considérée ou si les inconvénients en résultant ne pouvaient pas être conjurés. Un vent de 112 km/h est un cas de force majeure exonérant le constructeur d’un camion de l’accident survenu à celui-ci”.

[23] Counsel Kayiranga Rukumbi Bernard, representing Kigali City, states that the High Court awarded Maco Musoni Oscar Léonce excessive unjust damages because he purchased the vehicle at the price of 1,400,000Frw, therefore if that vehicle was damaged it cannot be repaired at a cost of 3,304,000Frw, because it is more than twice its value. He finds that instead it should have been declassified and compensated after deducting its depreciation.

[24] With regard to the costs for repairing the vehicle awarded to Maco Musoni Oscar Léonce, Counsel Kayiranga Rukumbi Bernard states that if the vehicle could have been repaired, the owner as a business person would have repaired it, therefore, Kigali City is not liable for the costs of repairs. Regarding the damages for the loss of income awarded by the Court, he finds that they were calculated at 15,000 Frw per day which is also excessive, given that there are times when many taxis spend a whole day parked because there are no passengers, some in garages and even they have to be serviced, which is paid from the profit they make.

[25] Me Bizimana Shoshi Jean Claude, the counsel for Maco Musoni Oscar Léonce, argues that the allegations of the representative of Kigali City that most taxis spend most of the time parked is an assumption because he never researched it, thus he finds the damages awarded by the High Court reasonable, and that this court should increase those damages and be computed until the judgment is pronounced because until now the vehicle is still in the garage because there is no money to repair it, he prays that Maco Musoni Oscar Léonce should be awarded 15,000 Frw x 2,666 days = 39,990,000 Frw.

[26] Regarding the cost of repairing the vehicle Counsel, Bizimana Shoshi Jean Claude argues that it was not computed fraudulently because there was a garage that submitted the quotation for the repair, and its normal for the cost of repairing a vehicle to be higher than the price the vehicle was purchased on.

DETERMINATION OF THE COURT

[27] As motivated above and subject to the provisions of article 260, paragraph 1, of the Decree-Law of 30/07/1888 relating to contracts or obligations (CCLIII), Kigali City should be liable for damages resulting from the above-mentioned accident.

[28] The Court finds that the 3,304,000Frw awarded for the cost the repair of the vehicle awarded to Maco Musoni Oscar Léonce by the High Court in the appealed case should be upheld, because Kigali City did not reply his letters it received, including that of 28/12/2010 requesting for the compensation for his damaged vehicle and also that of 14/03/2011 reminding of the first one, was not responded to either did it carry out counter-expertise to demonstrate that the vehicle should be declassified, and the owner is paid its standing value as he alleges, as, in the previous court, he does not also explain how it should be computed a part from alleging that it is excessive.

[29] Regarding the lost income which Maco Musoni Oscar Léonce claims that he should have got from his vehicle if it was operational, the Court finds that 14,025,000 Frw determined by the High Court as the revenue which would have been got from it, if it was operational was awarded in the discretion of the court, therefore it has no basis because the plaintiff did not produce his financial turnover to determine what he lost, therefore, it should not have been awarded and it should not be awarded by this Court or increased as requested because Maco Musoni Oscar Léonce did not produce the evidence as required by article 12 of the Law N° 22/2018 of 29/04/2018 mentioned above.

B. CROSS APPEAL FILED BY MACO MUSONI

[30] Me Bizimana Shoshi Jean Claude, the counsel for Maco Musoni Oscar Léonce, argues that the 200,000Frw for the moral damages awarded by the High Court is little, he requests the Court to award him 15,000,000Frw because Kigali City led him to sue which was not necessary, the condition of living for his family became hard when he had planned and saved for it, he also requests for the procedural and counsel fees of 2,500,000Frw.

[31] Counsel Kayiranga Rukumbi Bernard, representing Kigali City argues that the moral damages claimed by Maco Musoni Oscar Léonce are unfounded, as it is the right of the party to appeal, and Kigali City should not be liable for damages as explained above. As for the counsel fees, he argues that the amount is excessive, that if the court finds it necessary he should be paid 500,000Frw which is provided by the instructions of the Bar Association.

DETERMINATION OF THE COURT

[32] Article 152 of the Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides that “The respondent in appeal court may also have some claims to be made in his or her defense (...)”.

[33] The Court finds that the moral damages which Maco Musoni Oscar Léonce claims from Kigali City are justified because since his vehicle was involved in an accident, he has been continuously requesting Kigali City to compensate for his damaged vehicle but did not respond, until he resorted to courts of law and it did not appear in the court on the first instance and it is now eight years without being paid, which caused him distress, however, the 15,000,000Frw, he requests arguing that the 200,000 Frw awarded by the High Court was too little, is excessive, therefore in its discretion, he is awarded 1,000,000Frw.

[34] Regarding the 2,500,000Frw for the procedural and counsel fees, which Maco Musoni Oscar Léonce claims from Kigali City, the Court finds that it should not be awarded since some of the grounds of both parties have been found with merit.

III. DECISION OF THE COURT

[35] The appeal of Kigali City has merit in parts.

[36] The cross appeal filed by Maco Musoni Oscar Léonce has merit in parts.

[37] Orders Kigali City to pay to Maco Musoni Oscar Léonce 3.304.000Frw for repairing his vehicle Toyota Hiace Minibus RAA 089 K which was damaged by the accident caused by a tree on the roadside and 1.000.000 Frw for moral damages, altogether amounting to 4.304.000 Frw.

[38] Orders Kigali City to pay 100.000Frw for the court fees.