

## 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 – Liability based on insurance contract – Liability of insurer vis a vis the faults committed by domestic of the head of a company – The insurer shall not escape its liability mentioned in the insurance contract pretending that the faults were committed by the domestic of the head of a company – Decree Law n° 20/75 of 20/06/1975 related to insurance, article 12 – Common terms and conditions relating to special fire insurance, article 46.*

*Contracts or obligation Law – Solidarity in obligation to pay – Solidarity in obligation between the insurer and the participant in the prejudice against the insured – Solidarity in obligation is not assumed, it shall be expressly provided in contract except when it is provided for 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 insured object at the day of the accident – When no party has submitted the value of the object insured at the day of the accident, damages are determined based on insured value – The value of damages shall never be more than the insured object at the day of the accident – Decree Law n° 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 in vain – 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, domestic of Kayibanda Joseph burnt two cars (2) belonging to Modern Technology Services Ltd represented by Kayibanda Joseph. After the incident, Modern Technology Services wrote to SORAS AG LTD requesting their reparation or the payment of the value they had before the incident.

On 26 January 2012, SORAS AG Ltd answered MTS Ltd that it could not pay, explaining that the fire was set by a person under responsibility of insured shall be liable since 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 the burnt cars belonged to it but not to Kayibanda, and that both are different legal persons. The Commercial High Court ordered SORAS AG Ltd and Nzayirata Donat to jointly pay the value of the cars, and also ordered SORAS AG Ltd to pay damages to MTS Ltd and Kayibanda Joseph.

SORAS AG Ltd appealed to the Supreme Court stating that the commercial High Court misused article 260 of Civil Code Book III which led to unfair decision. It added that the court did not indicate grounds based on the law which led it to order SORAS AG Ltd and Nzayirata Donat to jointly pay while they were different and did not explain the ground of solidarity.

MTS 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

MTS They also stated that since it is SORAS AG Ltd that requested the intervention of Nzayirata Donat intending to jointly pay with him even if he defaulted to appear. They added that in case SORAS AG Ltd does not find it necessary it shall be ordered to repair the burnt cars or reconstitute their value.

MTS Ltd and Kayibanda Joseph filed the cross appeal; MTS Ltd requested to SORAS AG Ltd procedural and advocate fees of 10% of the money to be determined by the court. It also requested to court to order SORAS AG Ltd to pay 1,000,000Frw per month of penalty forcing execution. Kayibanda Joseph requested procedural and advocate fees equal to 800,000Frw.

SORAS AG Ltd stated that it does owe neither damages nor fees to MTS Ltd and Kayibanda Joseph.

**Held:** 1. Bosses and/or employers are liable for prejudices caused by their servants and/or employees in execution of their duties. This shall not apply when the liability of the insurer derives from the contract between the insured and the insurer while the insurer cannot escape or decline its liability provided in the contract.

2. The solidarity is not assumed, it must be expressly provided except when it is expressly based on the law. The insurer is not forced to jointly pay with defaulter when the request on the insured is provided in their contract. However, after paying the damages, the insurer has the right to sue the defaulter for damages, but through filing another case.

3. When parties do not provide the value of the insured object at the day of the accident, the insured value shall be paid. 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 that the execution was for an unforeseen cause without bad faith. The damages include the loss and interests which should be generated by the insured.

4. Penalty forcing execution shall be imposed to the insurer when insured spent long period requesting to be paid but in vain.

**Appeal lacks merit.  
Cross appeal has merit.  
Court fees charged to the appellant.**

**Statutes and statutory instruments referred to:**

Law of 30/07/ 1888 relating to contracts or conventional obligations, articles 45, 47, 63 and 100.

Decree Law n° 20/75 of 20/06/1975 relating to insurance, articles 12, 27 and 32.

**No case referred to.**

## **Judgment**

### **I. BRIEF BACKGROUND OF THE CASE**

[1] On 30 October 2011, Nzayirata Donat burnt two cars (2) belonging to Modern Technology Services Ltd ( MTS Ltd) in the parking of the house of Kayibanda Joseph, its managing Director. Because the cars were insured in SORAS AG Ltd, MTS Ltd notified it

the incident and sent to it the repair quote of both cars Toyota Hilux RAB 417P and Nissan Infiniti RAB 115U and the value they had before the incident. He requested their reparation or compensation of the value they had before the incident.

[2] On 26 January 2012, SORAS AG Ltd replied to MTS Ltd that it could not pay, explaining that the fire was set by a person under the responsibility of the insured as his agent that also article 39 of the contract they concluded provides that the insured is not entitled to guarantee property damage, theft, fire when in such a situation in terms of liability insurance and according to law, the company could refuse his intervention, namely claim from the compensation paid especially that Nzayirata Donat who burnt the cars was a domestic of Kayibanda Joseph.

[3] MTS Ltd filed a case against SORAS AG Ltd to the Commercial High Court requesting the content of the above mentioned claim. It explained that those cars belonged to it not to Kayibanda and that both are two different persons, reason why SORAS AG Ltd shall be liable for the incident.

[4] The Commercial High Court adjudicated the case RCOM 0050/12/HCC on 28 February 2013, and ordered SORAS AG Ltd and Nzayirata Donat to pay *in solidum* MTS Ltd the value of those cars equal to 42,000,000Frw. It also ordered SORAS AG Ltd to pay MTS Ltd 20,160,000Frw, and ordered it to pay Kayibanda Joseph 1,050,000Frw.

[5] Not satisfied with the court decision, SORAS AG Ltd appealed to the Supreme Court on 22 March 2013 stating that the Commercial High Court misapplied article 260 of Civil Code Book III, which led to an unfair decision. It also stated that the court did not take into account the provisions of article 141 of the Rwandan Constitution of 4 June 2003, as amended to date, article 147 of the Law n° 21/2012 of 14 June 2012 relating to the civil, commercial, labour and administrative procedure, and article 100 of Civil Code Book III because without motivation it ordered SORAS AG Ltd and Nzayirata Donat to pay *in solidum* MTS Ltd 42,000,000Frw. 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 requesting the court that SORAS AG Ltd should pay him damages of procedural and advocate fees at appeal level.

[7] MTS Ltd filed a cross appeal requesting different damages relating to the accident occurred. It also requested the court to inflict SORAS AG Ltd the penalty forcing the execution and payment of damages for being dragged into unnecessary litigation.

[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 (MTS) Ltd represented by Munderere Léopold, the counsel, Kayibanda Joseph represented by Ndayisaba Fidèle, the counsel, while Nzayirata Donat defaulted to appear while he was summoned in accordance with the law and the court decided to hear the case in his absence. During the hearing, SORAS AG Ltd notified the court that it withdrew its ground of appeal regarding the non-compliance with the provision 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 for the acts committed by his domestic, Nzayirata Donat.**

[9] Rusanganwa Jean Bosco, the counsel, states that the Commercial High Court misapplied article 260 of Civil Code Book III deciding that Kayibanda Joseph is not liable for the fire set by Nzayirata Donat to two cars referred to in this case, while Nzayirata Donat was his employee. He explained that article 260 of the Civil Code Book III mentioned above is very clear that as his employer, Kayibanda Joseph shall be liable of the acts of his employee in execution of his duties. Thus to set aside the liability of the employer vis a vis the acts committed by his employee when he did not mandate to do so and while the acts committed were not within his responsibilities, it is disregard of legal provisions. He also explained the concept referred to the Commercial High Court stating that “to commit fault related to his/her responsibilities” there is no closeness with article 260 mentioned above, and it is not even found in provisions of law; while it is prohibited to add anything to the provisions of the legislator.

[10] Rusanganwa Jean Bosco, the counsel, states that, except the arguments above, there is a case RP 0054/11/TB/KCY rendered Primary Court of Kacyiru on 25 January 2012 where Nzayirata Donat admitted that he burnt those cars because his employer kicked him in head and in ribs when he found him with the food in the car, which made him angry and burn them. Therefore, he finds that statement of Nzayirata Donat clearly demonstrates that he committed these acts being at work.

[11] In concluding, Rusanganwa Jean Bosco, the counsel, stated that basing on all the facts, Kayibanda Joseph is liable of the prejudice because the insurance contract does not exclude the liability of third parties. Thus, Kayibanda Joseph is legally considered 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 conferred to Nzayirata Donat burning cars of MTS Ltd at Joseph Kayibanda’s was not included. He added that if SORAS AG Ltd confirms that it should provide evidence. He kept stating that SORAS AG Ltd misinterpreted article 260 of Civil Code Book III while 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 in case the offenders, even if they are its employees committed those acts while they were not mandated to do so by the employer. Therefore, he finds that Kayibanda Joseph is not liable because he did not mandate Nzayirata Donat to commit cruel acts directed against MTS Ltd.

[13] As written in the letter of SORAS AG Ltd of 26 January 2012 Munderere Léopold, the counsel, states that SORAS AG Ltd recognizes that Nzayirata Donat is not an employee of MTS Ltd. Therefore, SORAS AG Ltd as the insurer who was paid insurance premiums should pay in case the insured risk occurs, basing on the contract concluded with MTS Ltd.

[14] NdayisabaFidèle, the counsel, states that argument of SORAS AG Ltd has no merit because as explained by the court, among responsibilities of Nzayirata Donat burning the cars was not included rather his act was not related to his duties. He added that in the deliberation of the appealed case, the Commercial High Court based on writing of law scholars stating that the employer is not liable of the acts of his employee who commit act not related to his duties basing on that the Court decided that Kayibanda Joseph is not liable for the acts committed by Nzayirata Donat. Thus he find that SORAS AG Ltd misapplied article 260 of

Civil Code Book III because in its paragraph 3, it explains well that employer is liable for the acts committed by the employee when he is accomplishing his duties.

## **THE VIEW OF THE COURT**

[15] Article 260 of Civil Code Book III paragraph 3, provides that employers are liable for the acts committed by the employees when they execute their duties. [.....].

[16] Article 33 of Civil Code Book III used when SORAS AG Ltd and MTS Ltd made the insurance contract provides that “Contracts made in accordance with the law shall bind parties. They may only be revoked at the consent of parties or for reason based on law. They shall be performed in good faith.

[17] Article 11, paragraph one of Decree Law n° 20/75 of 20/06/1975 related to the insurance provides that the insurer insures the incident that should occur to the insured as provided in contract they concluded.

[18] Article 46 of Common terms and conditions of vehicle insurance against fire, theft and property damage provides that the company insures the determined vehicle (frame, bodywork, including essential fixed accessories 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 loading of easily inflammable or explosive substances,
- b) Damage caused by earth quake of volcanic eruption
- c) Damage to electrical devices due to their own functioning
- d) Exclusion cases as result of general condition of Title II.

[19] The Supreme Court finds that in this case MTS Ltd requests that SORAS AG Ltd shall be ordered to execute its obligations delivering from the insurance contract made on 11 January 2011 (vehicle insurance policy against fire, theft and property damage).

[20] Concerning the argument of SORAS AG Ltd referring to the provision of article 260 of Civil Code Book III paragraph 3, relating to the fault willingly committed and alike, shall not guaranty the acts of Nzayirata Donat on the cars of MTS Ltd referred in the case because is the employee of Kayibanda Joseph who is the employee of MTS Ltd, Supreme Court finds that the provision is not related to this case because the requests of MTS Ltd concern the liability of SORAS AG Ltd from insurance contract mentioned above. Furthermore, there is no provision in the contract providing that SORAS AG Ltd shall not guaranty the prejudice from the employee of MTS Ltd or the employee of the staff of MTS Ltd. Therefore, basing on article 64 of Law n°45/2011 of 25/11/2011 governing contracts, and article 11, paragraph one of Organic Law n° 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 responsibility to guarantee the accident occurred to the cars insured.

[21] The Supreme Court finds that even though that article should be extraordinarily used it is only upon the victim to request to court to use that article, because the employer of the

defaulter refused to pay the prejudice caused by his employee<sup>1</sup>. Therefore, SORAS AG Ltd cannot request that the provision of article 260, paragraph 3 Civil Code Book III be used in this case since it is not the victim of the fault committed by Nzayirata Donat, employee of Kayibanda Joseph.

[22] Furthermore, the Supreme Court finds as explained by the Commercial High Court the provision of article 260, paragraph 3 Civil Code Book III shall apply only when the employee caused prejudice to others or their property executing his duties, while as mentioned on the case RP 0054/11/TB/KCY decided by the Primary Court of Kacyiru on 25 January 2012 that Nzayirata Donat, the domestic of Kayibanda Joseph acknowledged to have burnt the cars because his employer beat him, and because of because of anger he (Nzayirata Donat) burnt them. Thus, his act has no link with his duties (to ensure the security of the property) especially that he did it willingly and for his own reasons<sup>2</sup>.

[23] Except all that, the Supreme Court finds that even if Nzayirata Donat would be the employee of MTS Ltd, this cannot exempt SORAS AG Ltd to guarantee the prejudice since article 12 of the Organic Law n<sup>o</sup> 20/75 of 20/06/1975 relating to the insurance provides that insurer guarantees the loss and the prejudice caused by the person under responsibility of the insured basing on the provision of the Civil Code disregarding the nature and the quantity of the fault they committed.

[24] Based on the finds already presented, the Supreme Court finds that the defence of SORAS AG Ltd should not be considered. Thus, it should compensate MTS Ltd with all the damaged property and thereafter subrogates it over the one who caused it to pay as result of his acts<sup>3</sup>.

#### **b. Whether the Commercial High Court made a mistake in deciding the payment in solidum between SORAS AG Ltd and Nzayirata Donat to MTS Ltd.**

[25] Rusanganwa Jean Bosco, the counsel, states that the Commercial High Court ordered without motivation SORAS AG Ltd and Nzayirata Donat to pay 42,000,000Frw to pay *in solidum* while they are two persons different. Thus, he finds that the Commercial High Court did not respect the provision of article 141 of the Constitution of the Republic of Rwanda of 4 June 2003, as amended to date, article 147 of the Law n<sup>o</sup>21/2012 of 14/6/2012 relating to the civil, commercial, labour and administrative procedure and disregarded the provision of article 100 of Civil Code Book III.

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<sup>1</sup>Le 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<sup>o</sup> 214, in code civil, édition 2000, Dalloz, Paris, 2000, P. 1039.

<sup>2</sup>Le 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 par ..... à 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

<sup>3</sup>Article 32 paragraph 1 of Decree Law n<sup>o</sup> 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.

[26] Munderere Léopold, the counsel, states that argument of SORAS AG Ltd has no merit because it is the one that forcibly intervened Nzayirata Donat intending to pay *in solidum* with him because he caused prejudice to MTS Ltd. He keeps stating that if SORAS AG Ltd does not consider that Nzayirata Donat pays his prejudice with it, it should execute its obligation of paying MTS Ltd all the prejudice insured.

[27] NdayisabaFidèle, the counsel, states that argument of SORAS AG Ltd has no merit because Nzayirata Donat is at fault of burning cars. Then, based to article 258 of Civil Code Book III he should be liable of his acts. He continues stating that as long as SORAS AG Ltd received insurance premium, then ordering it to pay is not contrary to the law especially that article 46 of the contract they concluded (Common terms and conditions of vehicle insurance against fire, theft and damage property) clearly indicates circumstances under which it pays. Therefore, in case it does not pay, it would be unjust enrichment notwithstanding its request forcing Kayibanda Joseph and Nzayirata Donat to appear. Hence, the court finds that they could not be jointly liable to pay MTS Ltd, rather, it orders it to pay alone.

## THE VIEW OF THE COURT

[28] Article 100 of Civil Code Book III that was in force when SORAS AG Ltd and MTS Ltd concluded insurance contract provides that Solidarity is not presumed, it shall be expressly provided. That principle will not be considered in case the existing solidarity is clearly based on the law.

[29] Article 141, paragraph 2 of the Constitution of the Republic of Rwanda of 4 June 2003, as amended to date provides that Every court decision shall indicate the grounds of its basis, be written in its entirety [...].

[30] Article 147, paragraph 2, 3 and 4 of the Law n° 21/2012 of 14/6/2012 relating to the civil, commercial, labour and administrative procedure provides that ‘the judgment must contain grounds in law and in fact. It attributes the rejection of the evidence produced and the value it 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 that was into force when SORAS AG Ltd and MTS Ltd concluded an insurance contract provides that Contracts shall have effect only on contracting parties. They shall not cause any prejudice to a third party and shall only benefit to him/her in case of provisions in favor of a third party as provided by article 21.

[32] The Supreme Court finds that it is clear in the paragraph 13 of the appealed case that basing on article 258 of Civil Code Book III, the Commercial High Court decided without motivation that SORAS AG Ltd and Nzayirata Donat pay *in solidum* 42,000,000Frw to MTS Ltd. Thus, it did not respect the provision of the above mentioned article.

[33] The Supreme Court finds the payment *in solidum* impossible because the request of MTS Ltd to SORAS AG Ltd of paying pursuant to the insurance contract between them where Nzayirata Donat was not involved. Apart from that, on this case SORAS AG Ltd has no right to request that Nzayirata Donat shall be ordered to pay MTS Ltd based on the fault he willingly committed and alike while MTS Ltd requested that SORAS AG Ltd be ordered to pay insurance damage pursuant to insurance contract. Furthermore, SORAS AG Ltd has right and interest to request that Nzayirata Donat be ordered to pay the prejudice based on the

fault he willingly committed but after the payment of the insurance damages and through another case file, basing on to the provisions of article 32 of Decree Law n° 20/75 of 20/06/1975 relating to insurance above mentioned.

[34] Basing on the given explanations, the Supreme Court finds that referring to article 63 of Civil Code Book III, the Commercial High Court should not order Nzayirata Donat to pay the prejudice because of the incident occurred to the cars insured by SORAS AG Ltd and that it should not order SORAS AG Ltd and Nzayirata Donat to pay *in solidum* 42,000,000Frw to MTS Ltd. Thus, it did not consider the above mentioned provision.

### **C. Whether MTS Ltd shall be granted requested damages**

[35] Munderere Léopold, the counsel, states that SORAS AG Ltd should either be ordered to pay 23,290,170Frw for repairing the car “Toyota Hilux”on as it is highlighted in repair estimate or its insured value equal to 22,000,000Frw and either to pay 37,161,806Frw to repair the car “Infinity” as it found in the repair estimate to pay its insured value equal to 20,000,000Frw.

[36] Munderere Léopold, the counsel, keeps stating that that MTS Ltd requests that SORAS AG Ltd be ordered to pay 52,800,000Frw paid on the rent of other cars for doing work from 30 October 2011 to 30 June 2014, requesting that the amount keeps increasing till the final judgment.

[37] Munderere Léopold, the counsel, concludes that MTS Ltd requests the court to order SORAS AG Ltd to pay the procedural and advocate fees equivalent to 10% of the money it would be ordered to pay by the court. In addition, he requests the court to order it to pay 1,000,000Frw every month for penalty forcing the execution.

[38] Rusanganwa Jean Bosco, the counsel, rejected damages requested by MTS Ltd to SORAS AG Ltd.

## **THE VIEW OF THE COURT**

[39] Article 27 Decree Law n° 20/75 of 20/06/1975 relating to the insurance provides that property insurance is indemnity contract. The value of indemnity shall never be more than the value of the insured object at the time of accident.

[40] Article 45 of Civil Code Book III that was into force when SORAS AG Ltd and MTS Ltd concluded insurance contract provides that when necessary the debtor shall pay damages for non-execution or delay in execution of obligation. If he/she does not prove the non execution was due to unforeseen and unpredictable event and without bad faith.

[41] Article 47 of Civil Code Book III that was into force when SORAS AG Ltd and MTS Ltd concluded insurance contract provides that the damages due to the creditor are in general, the incurred loss and the profit of which he was deprived with the exception and modification below.

[42] Article 258 of Civil Code Book III provides that any act committed by a person who causes damage to another shall render the person through whose fault the damage was caused liable to make reparation for it.



[43] For damages related to the damaged car, the Supreme Court finds in the paragraph 13 of the appealed case, the Commercial High Court ordered to SORAS AG Ltd to pay 42,000,000Frw to MTS Ltd equal to the value of the damaged car.

[44] The Supreme Court finds that in case the parties did not determine the value of the insured cars insured on the day of the incident and that SORAS AG Ltd did not react on the request of MTS Ltd; SORAS AG Ltd shall give to MTS Ltd the damages equal to the amount insured value. Thus, SORAS AG Ltd shall pay to MTS Ltd 42,000,000Frw equal to the value of the insured cars.

[45] Concerning 52,800,000Frw of the rent of car requested by MTS Ltd, the Supreme Court finds that the Commercial High Court granted 19,360,000Frw to MTS Ltd relating to the rent of two cars from January 2012 to November 2012.

[46] The Supreme Court finds that MTS Ltd had continued renting two cars (Toyota Hilux RAB 207 V on 910,000Frw for each month and Toyota RAV 4 RAB 838 P on 850,000Frw each month) till June 2014 because SORAS AG Ltd did not fulfil its obligations arising from insurance contract. Therefore, based on article 45 and 47 of Civil Code Book III mentioned above and as demonstrated by invoices submitted by MTS Ltd, SORAS AG Ltd should reimburse 33,440,000Frw for the rent of the cars due from December 2012 till June 2014 adding 19,360,000Frw granted by the Commercial High Court, all totalling 52,800,000Frw.

[47] For the procedural and advocate fees equal to 10% of the granted damage, the Supreme Court finds that the amount requested by MTS Ltd was excessive. Thus basing on article 258 of Civil Code Book III, and in its discretion, the court grants 300,000Frw for procedural and 500,000Frw of advocate fees adding 300,000Frw granted by the Commercial High Court, all totalling 1,100,000Frw.

[48] Regarding the penalty enforcing the execution of court judgment requested by MTS Ltd to SORAS AG Ltd, the Supreme Court finds that basing on article 216 of the Law n° 21/2012 of 14/6/2012 relating to the civil, commercial, labour and administrative procedure, that penalty is necessary because of long period it asked for that amount but in its discretion it orders that SORAS AG Ltd shall be forced to pay 500,000Frw each month to MTS Ltd as long as it delays to pay the damages ordered in this case instead of being 1,000,000Frw since it is excessive.

**d. Whether Kayibanda Joseph may be granted of the money he is requesting.**

[49] NdayisabaFidèle, the counsel, states that basing on article 167 of the Law n° 21/2012 of 14/6/2012 relating to the civil, commercial, labour and administrative procedure, he requests the court to order SORAS AG Ltd to pay Kayibanda Joseph procedural and advocate fees at appeal level equal to 800,000Frw. In conclusion, he requested the appealed judgment be upheld except with regards to the requested damages.

[50] Rusanganwa Jean Bosco, the counsel, stated that SORAS AG Ltd owes nothing to Kayibanda Joseph.

## **THE VIEW OF THE COURT**

[51] Article 258 of Civil Code Book III provides that any act committed by a person who causes damage to another shall render the person through whose fault the damage was caused liable to make reparation for it.

[52] The Supreme Court finds that Kayibanda Joseph shall be paid the procedural and advocate fees; 300,000Frw for procedural fees, 500,000Frw for advocate fees and 1,000,000Frw granted by the Commercial High Court, all totalling 1,800,000Frw.

### **III. THE DECISION OF THE COURT**

[53] Decides that the appeal of SORAS AG Ltd has no merit.

[54] Decides that the cross appeal of MTS Ltd has merit.

[55] Decides that that appeal of Kayibanda Joseph cross appealed to that of SORAS AG Ltd has merit.

[56] Orders SORAS AG Ltd to pay 42,000,000Frw to MTS Ltd of the value of insured cars.

[57] Orders SORAS AG Ltd to pay 52,800,000Frw to MTS Ltd for the rent of cars from December 2011 to June of 2014.

[58] Orders SORAS AG Ltd to pay MTS Ltd 300,000Frw for procedural fees, 500,000Frw for advocate fees, adding 300,000Frw granted by the Commercial High Court, all totalling 1,100,000Frw.

[59] Orders SORAS AG Ltd to pay 500,000Frw to MTS Ltd each month in case it delays to pay the damages ordered in this case.

[60] Orders SORAS AG Ltd to pay Kayibanda Joseph 300,000Frw for procedural and 500,000Frw of advocate fees, plus 1,000,000Frw granted by the Commercial High Court, all totalling 1,800,000Frw.

[61] Orders SORAS AG Ltd to pay Kayibanda Joseph 50,000Frw each month in case it delays to pay the damages as ordered by the Commercial High Court.

[62] Orders SORAS AG Ltd to pay the court fees.