

## SEBATWARE ET AL v. RWANDAIR

[Rwanda SUPREME COURT – RCOMAA 0021/13/CS (Mutashya, P.J., Nyirinkwaya and Hitiyaremye, J.) July 21, 2015].

*Laws of Aerial Transport – Liability – The damage resulting from the death occasioned by the plane crash – The one who carries people by air has to be held liable for the damages resulting from the death of whom he carries in case he failed to prove that it was occasioned by another ground than the accident he got within the airplane – Varsovie Agreement of 12/10/1929, as modified by La Haye Agreement of 28/09/1955, article 17.*

*Damages – Quantum of damages – The fact that the one who carried people by air has accepted to pay the damages exceeding the limited number provided in the Varsovie Convention as amended by that of La Haye, he cannot change the mind and say that this limited number is the one which has to be respected – Varsovie Agreement of 12/10/1929 as modified by la Haye Agreement of 12/10/1929, article 23.*

*Damages – The procedural damages – In case the claimed damages are excessive considering the period of time that the case has taken and what has been done on it they are determined within the discretion of the court.*

**Facts:** On 12/11/2009 RWANDAIR had a plane crash as it was setting off Kanombe Airport where Nyirangororoka Azera, a passenger in that plane was seriously injured and it resulted in her death. Azera's husband and their two children filed a case in the Intermediate Court of Gasabo requesting for damages based on the agreement on passenger's Air Transport Agreement that was not respected. Court declared its jurisdiction incompetence to decide on this matter.

On 18/01/2013, the plaintiffs filed a case again in the Commercial Court of Nyarugenge and RWANDAIR also raised an objection of inadmissibility of the claim alleging that the claim was filed after two years provided for in the Varsovie agreement. The Court decided that the claim to expire stopped the day it was filed in the Intermediate court of Gasabo.

While defending in substance, RWANDAIR states that the deceased was never affected by the plane crash; instead that, she had an accident in the ambulance that was taking her to the Hospital. The court decided that this argument from RWANDAIR has no merit because it does not show the role of the ambulance accident in the death of the deceased; therefore, the court ordered RWANDAIR to give damages to the plaintiffs equal to 20,000,000Frw to each of them.

RWANDAIR appealed to the Commercial High Court claiming that the previous court denied considering the raised objection of inadmissibility of the case since the claim of the plaintiffs was filed after time. The court decided that this objection was valid and therefore that this case should not have been admissible in the previous court because the period of two years was not respected.

Sebatware and his children appealed in the Supreme Court but RWANDAIR also raised the objection of lack of lack of jurisdiction of the Supreme Court then in the preliminary hearing, this court ruled that their case was not filed after as it was ruled by the Commercial High Court and thus ruled that this objection of lack of jurisdiction is not valid.

In the substance of the case, the appellants stated that Rwanda civil Aviation itself admitted to the death of one person in the plane crash that took place at Kanombe Airport on

12/11/2009, and that there is even a report by RWANDAIR accepting the role it has in the death of the deceased, stating that there is nobody else responsible for paying damages resulting from her death other than RWANDAIR because it is the one that contracted with the deceased to get to her destination.

RWANDAIR claimed that Sebatware and his children never provided evidence to prove that the death of the deceased resulted from the plane crash reasoning that when she was being taken to the hospital, she had another accident with the ambulance that was taking her and that she reached the hospital dead.

The representative of the civil parties states that there is no mistake committed by Commercial Court of Nyarugenge by refusing to compute damages basing on general terms and conditions of transport of RWANDAIR since the Varsovie agreement does not allow passengers airline carrier to decline or reduce his/her liabilities and thus requests that his clients be awarded the 982,500USD they requested for in the previous court since Varsovie agreement as amended by La Haye agreement provides in its article 22-1 that damages to individuals who lost their person in the plane crash is 250,000Frw, while Article 22-5 provides that the “franc” mentioned in paragraph one is equal to milligrams 65.5 of Gold, and the exchange of this money 250,000F in the currency of a certain state is done according to the value of Gold (valeur-or) on that money, beginning at the time the judgment was passed.

RWANDAIR claims that the Commercial Court of Nyarugenge awarded damages equal to 20,000,000Frw per person who claimed for it without any basis, disregarding article 22 of Varsovie Agreement as amended by La Haye agreement of which Rwanda signed while these agreements do not prohibit the principle of civil liability, and therefore that there is no damages to be awarded in case the claimant does not produce the proof of prejudice. It also stated that valuing the currency basing on the value of gold is no longer in use because since 1973, the value of any country’s currency is no longer valued on Gold as it was before that year and that it was even confirmed by the Jamaïque Agreement of 7<sup>th</sup> and 8/01/1976 abolishing *parité –or des monnaies*.

**Held:** 1. The defendant has to be held liable for the damages resulting from the death of the deceased in case he failed to prove that it was occasioned by another ground which is not the accident he got within the airplane

2. The fact that RWANDAIR has itself accepted to pay the damages exceeding the limited number provided in the Warsaw Convention as amended by that of Hague, he cannot change the mind and say that this limited number is the one which has to be respected. Thus the court committed no error by condemning the defendant to pay the damages amounting to 20,000,000Frw, to each one who claimed for them as they are three which all makes 60,000,000Frw.

3. Considering that the procedural damages requested for by the plaintiffs being excess, in respect of the time the claim has spent in court and all the expenses on it, the defendant should pay to the civil party in this case damages equal to 1,000,000Frw in addition to 900,000Frw ordered on the first level, in total, it equals to 1,900,000Frw on all the three levels of their adjudication.

**Appeal has no merit.  
Cross appeal has merit in part.  
Court fees to the defendant.**

**Statutes and statutory instruments referred to:**

The Varsovie Agreement of 12/10/1929 as amended by La Haye Agreement of 28/09/1955, articles 17 and 23.

**No case referred to.**

## **Judgment**

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

[1] On 12/11/2009, a plane of RWANDAIR crashed while taking off at Kanombe Airport, Nyirangororoka Azera was in and she got injured and was taken to King Faisal Hospital, where she later died after few minutes.

[2] On 11/11/2011, Sebatware Bizimana Sébastien, Nyirangororoka's husband and her two children namely Niyongere Claire and Kagame Alexis filed their claims in Intermediate Court of Gasabo requesting for damages based on failure to respect of people's Air transport contract but the court declared itself incompetent in the hearing of 24/04/2012.

[3] On 18/01/2013, Sebatware Bizimana Sébastien and his children whom he represents again filed a claim in the Commercial Court of Nyarugenge and RWANDAIR raised an objection of inadmissibility of the claim because it was filed after two years provided for in article 29 of the agreement of Varsovie of 12/10/1929 of which Rwanda signed. The court passed the judgment RCOM0101/13/TC/NYGE on 30/04/2013, confirming that the expiry of the claim stopped to be counted on 11/11/2011, when the plaintiff filed the case in the due time provided for by the law in Intermediate court of Gasabo.

[4] Regarding the case in substance, the court passed a judgement on 30/04/2013, giving no merit on what RWANDAIR states saying that Nyirangororoka Azera never died as a result of their Plane that Crashed, that instead she died of injuries she got as a result of an accident she had in a car that was taking her to the hospital. The court gave no merit to this reasoning because RWANDAIR never proved the role of the ambulance's accident in the death of Nyirangororoka Azera, and ordered it to give damages to Sebatware Bizimana Sébastien, Niyongere Claire and Kagame Alexis equal to 20,000,000Frw each and pay procedural and Lawyer's fees equal to 900,000Frw.

[5] RWANDAIR appealed to the Commercial High Court stating that the claim of Sebatware Bizimana Sébastien, Niyongere Claire and Kagame Alexis should not be admitted because it was filed beyond the lawful time in disregard of the two years provided for in Varsovie agreement, giving more articles regarding the case in substance in case the court sees it otherwise, respondents on appeal also filed a cross appeal on damages.

[6] In the case RCOMA 0194/13/HCC of 27/09/2013, the Commercial High Court decided that the claim of Sebatware Bizimana Sébastien, Niyongere Claire and Kagame Alexis should not have been admitted in the Commercial Court of Nyarugenge because it was filed without respecting the two years provided for in Varsovie agreement.

[7] Sebatware Bizimana Sébastien, Niyongere Claire and Kagame Alexis also appealed in the Supreme Court; their claim was registered on RCOMAA 0021/13/CS. In the pre

judgement of 06/06/2014, the court decided that the objection raised by RWANDAIR on the jurisdiction of the court has no merit.

[8] In the Pre judgement of 14/11/2014, this court also decided that the claim of Bizimana Sébastien, Niyongere Claire and Kagame Alexis in the Commercial Court of Nyarugenge was not filed late as decided by the Commercial High Court, therefore the appeal of RWANDAIR on the case RCOM 0101/13/TC/NYGE should be examined in substance and examine also the cross appeal of Sebatware Bizimana Sébastien, Niyongere Claire and Kagame Alexis.

[9] The hearing of the case in substance was held on 20/01/2015 and on 13/05/2015, Sebatware Bizimana Sébastien, Niyongere Claire and Kagame Alexis being represented by Counsel Rwihandagaza Richard, while RWANDAIR was represented by Counsel Nkurunziza François Xavier.

[10] In the hearing of 13/05/2015, Court had the witnesses; Biggi Zimvumi who made the report on the Plane Crash and Ngendo Vincent who was a flight attendant in the Plane in which Nyirangororoka Azera was in when it crashed.

## **II. ANALYSIS OF THE LEGAL ISSUES**

**A) To know whether the death of Nyirangororoka Azera is not a result of a Plane Crash that occurred on 12/11/2009, so that RWANDAIR should not be taken responsible of her death.**

[11] Counsel Nkurunziza François Xavier on behalf of RWANDAIR states that the Commercial Court of Nyarugenge decided upon the case on the first level disregarding that Bizimana Sébastien, Niyongere Claire and Kagame Alexis had no evidence to prove that the death of Nyirangororoka Azera resulted from a Plane Crash, because she was taken to the hospital, and the ambulance that took her to the hospital also had an accident, and she reached there already dead.

[12] He also states that RWANDAIR tried to negotiate the plaintiffs because it was accepting to pay 51,500USD equivalent to its role in the incident, which includes 10,000USD for Sebatware, 20,000USD for Niyongere Claire, 20,000USD for Kagame Alexis and 1,500USD for following up the case (frais), but he goes on to say that RWANDAIR should not be ordered to pay all the damages alone yet the one who played a big role in the death of Nyirangororoka Azera is the driver of the ambulance in which she was injured which being taken to the hospital.

[13] Counsel for RWANDAIR states further that, the report of the car accident is available because its driver was prosecuted in the military court, he also requested for the finding of that file so as to provide evidence on the role of that accident in the death of Nyirangororoka Azera.

[14] Counsel Rwihandagaza Richard on behalf of Bizimana Sébastien, Niyongere Claire and Kagame Alexis states that Rwanda Civil Aviation itself consented that one person died in the plane crash that took place on 12/11/2009 at Kanombe Airport as indicated in the first report (rapport préliminaire) marked 35 in the file, also there is a letter from RWANDAIR marked 37 in this letter RWANDAIR admits to its role in the death of Nyirangororoka Azera.

[15] He goes on to say that Nyirangororoka Azera was never injured in the car accident, because she was not among the people that were taken in the Ambulance that had an accident. Instead she was taken by the police car and she is not mentioned anywhere in the report made by the police on this car accident.

[16] Additionally he says that though Nyirangororoka Azera would be in that car that had accident, nobody else would be responsible for paying damages resulting from her death other than RWANDAIR, because it is the contracting party to the deceased promising to take her up to her destination.

[17] Regarding this problem, in his testimony, Biggi Zimvumi states that after the plane crash, life savers found that the Food galley (where foods and beverages for passengers are kept) had fell on Nyirangororoka Azera, and was unconscious, she had injuries on the head and they thought she was dead. They took her out of the plane and took her to King Faisal Hospital using the commonly used car at the Airport, having the number plate of GR091A. They tried to save her life but within one hour, she died. This is the reason, he said, to why the international applied and she was counted among the people who died in a plane crash. He also said that Nyirangororoka Azera was not in the car GR 963A that had an accident while from the Airport, instead it carried one pilot, one Technician and two passengers were given another vehicle that took them.

[18] Ngendo Vincent also in his testimony states that he was an attendant in a plane that crashed at the Airport of Kanombe on 12/11/2009, he says after the crash, there were saving activities that took place, Nyirangororoka Azera was found unconscious and her head had crashed, the foreign Doctor who was present tried to give her oxygen but all was nothing and he advised them to take her to the hospital, took her to King Faisal Hospital on a pick up, but after 30 minutes in the hospital, he was told that she is dead.

## **VIEW OF THE COURT**

[19] Article 17 of the Varsovie Agreement of 12/10/1929 as modified by La Haye Agreement of 28/09/1955 of which Rwanda signed stipulates that whoever carries passengers on board is responsible for their death or injuries incurred in case they results from the plane crash in which the victim was while boarding or moving off the plane. Article 20 of the same agreement also stipulates that he/she cannot be responsible for the damaged if he/she manages to prove that he/she and his /her employees did all possible ways to prevent the crash or whether they had no any other choice, while article 21 of the same agreement stipulates that he/she cannot be responsible for damages when he/she can prove that it resulted from the was error committed by the victim.

[20] Regarding Nyirangororoka Azera, despite that RWANDAIR stating that her death resulted from the car accident that was taking her to King Faisal Hospital, the statement from Biggi Zimvumi and Ngendo Vincent prove that she was never taken in the ambulance that had an accident when it was taking one of the passengers that were in the plane that had a crash at the Airport, the statements also prove that she was terribly injured when she was taken off the plane and seemed dead by the time she was being taken to the hospital.

[21] Basing on the above mentioned statements therefore, justifying that Nyirangororoka Azera was taken off the plane with serious injuries, the certificate of the King Faisal Hospital indicate that she died on 12/11/2009 of head injuries. The certificate of the Civil Status

officer (the executive secretary of Shyogwe Sector) proves also that she died on 12/11/2009. Therefore the Court finds that RWANDAIR has failed to prove that the death of Nyirangororoka resulted from any other cause other than the plane crash, therefore, it should be held responsible for damages resulting from her death as provided for by the Varsovie agreement of 1929 as amended by the La Haye agreement of 1955.

**B) Regarding the damages RWANDAIR should be ordered to pay.**

[22] Counsel Nkurunziza François Xavier states that the Commercial Court of Nyarugenge awarded damages equal to 20,000,000Frw per person who claimed for it without any basis, disregarding article 22 of Varsovie Agreement as amended by La Haye agreement of which Rwanda signed, it states that; damages resulting from the death of a person in a plane crash should not exceed 250,000Frw calculated based on the cost of gold (Franc-Or), stating that this money is equal to 20,000USD as written in the contract between Nyirangororoka Azera and RWANDAIR as General Conditions of Transport (*conditions générales de transport*).

[23] He also states that Varsovie Agreement does not remove the principles of indemnities “*principe indemnitaire*”, thus no damages should be awarded when the victim does not prove the damages caused to him or her.

[24] Counsel Rwihandagaza Richard states that the Commercial Court of Nyarugenge committed no mistake when it refused to calculate damages based on the general conditions of transport (*conditions générales de transport*) of RWANDAIR, because the Varsovie agreement does not agree to the reduction and avoidance of responsibilities of the air transporters of passengers in Air transport (art. 23: “*toute clause tendant à exonérer le transporteur de sa responsabilité ou à établir une limite inférieure à celle qui est fixée dans la présente Convention est nulle et de nul effet...*”).

[25] In the Cross Appeal, the lawyer for Azera’s family requests the court to award Bizimana Sébastien, Niyongere Claire and Kagame Alexis 982,500USD as requested for on the first level because the Varsovie Agreement as amended by La Haye Agreement provides in its article 22-1 that damages to individuals who lost their person in the plane crash is 250,000Frw, while Article 22-5 provides that the «franc» mentioned in paragraph one is equal to milligrams 65.5 of Gold, and the exchange of this money 250,000Frw in the currency of a certain state is done according to the value of Gold (*valeur-or*) on that money, starting from the time the judgment was passed.

[26] Regarding the calculations of damages, the lawyer explains that one gram of Gold could cost 57.23USD on 09/11/2011 according to what has been put on the website of [www.sacra-moneta.com](http://www.sacra-moneta.com), implying that one milligram can cost 0.06USD, while 65.5 milligram would cost 3.93USD, thus 250,000Frw mentioned in the contract of La Haye is equal to 982,500USD.

[27] Counsel Nkurunziza François Xavier states that, what counsel Rwihandagaza is requesting for on behalf of Bizimana Sébastien, Niyongere Claire and Kagame Alexis in a cross appeal filed by his client has no merit, reasoning that since 1973, the value of any country’s currency is no longer taken from the value of Gold as it was the practice before that time, that it was even confirmed by the Jamaïque Agreement of 7<sup>th</sup> and 8/01/1976 abolishing *parité –or des monnaies*.

## VIEW OF THE COURT

[28] The Varsovie Agreement of 12/10/1929 provides in Article 22-1 that the minimum money the passenger's transporter can be responsible for in air transport is 125,000 Francs. This Agreement was later modified by the La Haye Agreement of 28/09/1995, the minimum money the passenger's transporter can be responsible of paying was put on 250,000Francs.

[29] However, in the two Agreement there were no provisions reserved where the value of money would be increased from the transporter per person as years goes by, and this is one of the important reason that caused some of the countries and the air transport associations put in place other Agreement that allows increment on the maximum money the passengers transporter can be held responsible for<sup>1</sup>, also the Montréal Agreement was signed on 28/06/1999 putting the maximum money the passengers transport can be held responsible for on 100,000DTS.

[30] The Agreement signed by Rwanda is Varsovie Agreement of 1929 as amended by La Haye of 1955. Among the Agreement that followed was that of Montréal which was never signed by Rwanda, Implying that in Rwanda, the maximum money the passenger transporter can be held responsible in Air transport per person remained on 250.000Francs.

[31] The Agreement which was signed by Rwanda, in its article 22-5 provides that this money (250,000Francs) is calculated based on the value of Gold (Franc-Or) composed of 65.5mg of Gold and the exchange in any country's currency is made based on its value to the cost of Gold (valeur-or)<sup>2</sup> in case awarding damages is necessary.

[32] The Civil Party is requesting for damages based on the cost of Gold on market but the Court finds as motivated by the first Judge is confusing the value of money into Gold (valeur-or) and the cost of Gold on the market.

[33] The Court also finds the exchange of money into Gold in each country's currency being impossible because the first Agreement<sup>3</sup> and the second<sup>4</sup> modifies the statute of "Fond Monétaire International" (FMI) which confirmed that the monetary value (monnaie) of a certain country is not measured on Gold, in such way that there can be a problem in case of knowing how damages based on the value of Gold "Franc-or" should be calculated when necessary.

[34] It was for solving a problem that was existing by then, that in 1975 an additional Agreement was prepared on Varsovie Agreement of 1929<sup>5</sup> and on La Haye of 1955<sup>6</sup> amending the Varsovie Agreement, the first one providing that the maximum money the transporter of passengers could be responsible of based on Varsovie is 8.300 Special drawing rights (SDR), while the second one provided that the maximum money the transporter of

---

<sup>1</sup> - Les accords de Malte du 1er avril 1987

- Les accords IATA (International Air Transport Association) signés le 31/10/1995 à Kuala Lumpur

- L'accord MIA signé le 3 Avril 1996 à Montréal

- Accord de Montréal de 1966 (75,000USD par passager)

<sup>2</sup> (...) la conversion de ces sommes en monnaies nationales autres que la monnaie-or s'effectuera en cas d'instance judiciaire suivant la valeur-or de ces monnaies à la date du jugement.

<sup>3</sup> *Le DTS-Dtroits de tirages spéciaux a été créé Le 28 juillet 196 lors du premier amendement aux statuts du FMI par le Fonds Monétaire International.*

<sup>4</sup> *7-8 janvier, le second amendement aux statuts du FMI; Accords de la Jamaïque (Kingston, 8 janvier 1976) décide de mettre un terme définitif au système monétaire des parités fixes mais ajustables.*

<sup>5</sup> *Protocole additionnel N°1 signé à Montréal le 25 septembre 1975.*

<sup>6</sup> *Protocole additionnel N°2 signé à Montréal le 25 septembre 1975.*

passengers can be responsible of paying based on La Haye Agreement, amending the Varsovie Agreement is 16,600SDR.

[35] Court finds that Rwanda having not signed the additional Agreement cannot be an obstacle because what is aimed at is finding out how the money mentioned about in Varsovie Agreement of 1929 and la Haye Agreement of 1955 was put in Special drawing rights (SDR).

[36] In respect of the additional Agreement therefore, (Procole N° 2) which provides that the maximum money that a transporter of passengers should be responsible for is 16.600SDR, Court finds that on 31/07/2015 that money was equal to 16,135,257Frw based on the value of 1,008.453575 provided for by the National Bank of Rwanda.

[37] However, The Court also finds, despite the money 16,600SDR being the one which should be taken as the amount not to be exceeded by the transporter of passengers as damages he/she should be responsible of paying in accordance to La Haye Agreement as amended by the Varsovie Agreement, it does not mean that it is this money that should be paid as a must because the victim has to first provide evidence of what was damaged (*fournir la preuve de l'existence et du quantum du dommage subi*). This is therefore a principle in Rwandan laws and International Laws.

[38] The Court also finds that however 16,600SDR is the money that should be taken as the maximum amount of damages which the transporter of passengers should be responsible of paying provided for by La Haye Agreement as amended by Varsovie Agreement. It does not mean that the victim should not be awarded damages exceeding that amount as explained in Article 23 of that Agreement, what is prohibited is to order the victim to have money less than what was provided for in the Agreement.

[39] Court finds RWANDAIR having stated in the pleadings that it wanted to give the civil party 51.500USD because it regards it worth to the role it has in the death of the deceased. The rest it counts it to the responsibilities of the owner of the ambulance that had an accident while taking Nyirangororoka to the Hospital, which it said had big role in the course of her death. It should be understood that the civil party clearly indicated to RWANDAIR the damages it incurred (*préjudice*), therefore, it cannot reverse the statement and say that the civil party never provided evidence to their damage.

[40] The Court also finds that RWANDAIR having accepted to pay amicably 51.500USD because it recognized that it matched the responsibility it has towards the death of the deceased (Only that it is clarified, that RWANDAIR has the sole responsibility on the death of Nyirangororoka), meaning that it accepted to pay damages exceeding the maximum amount mentioned about in the Varsovie Agreement as amended by La Haye Agreement focusing the supposed damages, therefore, RWANDAIR cannot reverse in statements and say that the maximum amount should be respected.

[41] Therefore, based on the above explanations, The Court finds that the Commercial Court of Nyarugenge committed no mistake when it ordered RWANDAIR to give damages to each of the civil party equivalent to 20,000,000Frw, in total being 60,000,000Frw.

[42] Regarding the procedural and Lawyer's fees, The Court finds that the 10,000,000Frw requested for is too much, considering the time the case has spent in court and all that has been spent on it, RWANDAIR should pay 1,000,000Frw to the civil party in this case, in



addition to 900,000Frw awarded at the first level, totaling to 1,900,000Frw on all the three levels of their proceedings.

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

[43] The Court decided that the appeal of RWANDAIR on the case RCOM0101/13/TC/NYGE decided upon by the Commercial Court of Nyarugenge on 30/04/2013 has no merit.

[44] The Court decided that the Cross appeal of Sebatware Bizimana Sébastien, Niyongere Claire and Kagame Alexis has merit partially.

[45] The Court decided that there is no change in the case RCOM0101/13/TC/NYGE decided upon by the Commercial Court of Nyarugenge, apart from issues regarding money for procedural and Lawyer's fees.

[46] The Court Orders RWANDAIR to give to Sebatware Bizimana Sébastien, Niyongere Claire and Kagame Alexis damages equal to 60,000,000Frw, and each of them should be paid 20,000,000Frw also as it has been decided upon in the case RCOM0101/13/TC/NYGE.

[47] The Court Ordered RWANDAIR to give to Sebatware Bizimana Sébastien, Niyongere Claire and Kagame Alexis money for procedural and Lawyer's fees equal to 1,900,000Frw.

[48] The Court Ordered RWANDAIR to pay 100,000Frw as court fees.