

UMWARI ET AL v. SN BRUSSELS AIRLINES

[Rwanda SUPREME COURT – RCOMA0007/10/CS (Mugenzi, P.J., Mukamulisa and Rugabirwa, J.) May 6, 2011]

Commercial procedure – Cross Appeal – Cross Appeal is not only limited to the scope of appeal, since nothing prevents it to extend also to other grounds of the case, provided they have been subject to debate at the first instance – Law N°18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, article 167.

Civil procedure – The admissibility of the claim – If the plaintiffs have hired one advocate while each one of them paid his/her own court fees, these are independent claims – Law N°18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, article 20.

Law Governing Air Transportation – Territorial jurisdiction – Applicable law – The plaintiff may choose the court of the carrier’s resident, headquarters, the place of the branch where the contract was signed, or the place of destination of passengers – The procedure shall be governed by the law of the seized Court – Warsaw Convention relating to International Carriage by Air, Signed at Warsaw on 12 October 1929 that has been ratified by Rwanda and Belgium, article 28.

Damages – Obligations of the carrier – Moral damages – The transport company has the obligation of taking the passengers to the destination agreed upon (obligation of result) which it cannot refrain from – Damages are granted in case it does not prove the effort to get other means to take the passengers to the agreed destination, even if this would be expensive.

Advocate fees – Advocate fees is granted in the discretion of the court in case the one claimed is too excessive.

Facts: Umwari and others bought the return tickets from SN BRUSSELS AIRLINES from Kigali- Rwanda to Belgium. On their way back to Kigali SN BRUSSELS AIRLINES left them in Kampala and Nairobi instead of taking them to Kigali. This led them to sue it before the Commercial High Court claiming damages for its failure to assist them and incurred expenses for their accommodation in Kampala and Nairobi as well as the travel back to Kigali while they had not planned it. The court decided that SN BRUSSELS AIRLINES pays to them the pecuniary damages and counsel fees.

The plaintiffs appealed to the Supreme Court claiming for the additional damages than those granted by the previous court, alleging that it has granted to them inadequate damages considering the prejudice they suffered, therefore they requested the court to allocate to each one 15,000 Euros and the counsel fees amounting to 10% of the latter.

SN BRUSSELS AIRLINES also raised a cross appeal whereby it requested the court to reject the plaintiffs’ appeal on allegation that the case should have been decided basing on the Belgium law as the company which transported the passengers is registered in Belgium. It alleges in addition that their claims were filed in contravention with the law because they were joined without the President’s court order. Therefore it requests to be awarded procedural expenses and damages for being dragged into vexatious lawsuits. It argues further that the plaintiffs were seven different individuals but who filed their case in a joint group without the capacity to file the case to the court. In their defense, the plaintiffs argued that

even if the claim that has been filed is common to all, there has been no violation of the law as long as each one paid his/her own court fees.

SN BRUSSELS AIRLINES argues that the plaintiffs' claim is time barred since the contract of the transport concluded between it and the plaintiffs is governed by the Belgium law which provides that the claim prescribes after one year. With regard to damages claimed by the plaintiffs, it argues that it cannot pay them because the travels from Kampala/Nairobi to Kigali were rendered impossible due to the force majeure, therefore it only admitted a to pay back the amount of tickets for the hindered travels together with expenses substantiated by documents.

Held: 1. Cross Appeal is not only limited to the scope of appeal, provided they have been subject to debate at the first instance.

2. If the plaintiffs have hired one advocate while each one of them paid his/her own court fees, these are independent claims.

3. The plaintiff may choose the court of the carrier's resident, headquarters, the place of the branch where the contract was signed, or the place of destination of passengers.

4. The transport company has the obligation of taking the passengers to the destination agreed upon (obligation of result) which it cannot refrain from. Therefore damages are granted in case the carrier does not prove the effort to get other means to take the passengers to the agreed destination, even if this would be expensive.

5. Advocate fees is granted in the discretion of the court in case the one claimed is too excessive.

**Appeal has merit.
The cross appeal lacks merit.
Court fees to the respondent.**

Statutes and Statutory instruments referred to:

Warsaw Convention relating to *International Carriage by Air*, signed at Warsaw on 12 October 1929, article 28.

Law N°18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure, articles 20 and 167.

No case was referred to.

Authors cited:

Melina Douchy-Oudot: "Procédure civile", 2ème édition, Paris, 2006, page 366, N°638.

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 return tickets from the company named SN BRUSSELS AIRLINES for Kigali to

Bruxelles. Before their return, that company cancelled the usual travels of Entebbe / Nairobi – Kigali, and consequently it only took those passengers to Kampala and Nairobi. SN BRUSSELS AIRLINES 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 destination.

[2] They sued that company claiming damages for its failure to assist them and incurred expenses for their accommodation in Kampala and Nairobi as well as the travel back to Kigali.

[3] The Commercial High Court decided that SN BRUSSELS AIRLINES has to pay the pecuniary damages as follow: 364,262Frw for Gakwaya, 287,174Frw for Nsengiyumva, 282,894Frw for Spinette, 247,192Frw for Senyana, 261,361Frw for Gakirendekwe, 261,361Frw for Somayire, 261,361Frw for Umwari and moral damages amounting to 1,283,939Frw (worth 1500 Euros) for each passenger and the lawyer's fees amounting to 1,000,000Frw.

[4] The plaintiffs appealed before the Supreme Court arguing that the previous Court did not consider the prejudice they endured, therefore they claimed that the court award each of them 15,000 Euros as they had claimed and the lawyer's fees amounting to 10% of 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, because the claimants seem to have jointly submitted their claims and the claims were joined without the President's court order from the competent court. It argued in addition that the fact that the case should have been rendered in reference to the Belgium law was disregarded since SN BRUSSELS AIRLINES which transported those passengers is registered in Belgium, and that the action was time barred according to the law of that country. It argued also that it disregarded the fact that the failure to take the passengers to Kigali was due to force majeure.

[6] That company claims to be paid 2,000Euros for procedural expenses and counsel fees. It claims also 1,000 Euros for being dragged into vexatious lawsuits.

[7] The hearing was held in public on 31 March 2011, whereby the plaintiffs were represented by Counsel Nzamwita Toy while Brussels Airlines was represented by Counsel Kavaruganda Julien and Counsel Nizeyimana Boniface.

[8] At the beginning of the hearing, the plaintiffs requested the court to reject the cross appeal raised by SN BRUSSELS AIRLINES since it is not within the scope of their appeal concerning moral damages. The respondents argued that their cross appeal does not contravene the law. The court decided to proceed and examine it with merit of the case.

II. ANALYSIS OF LEGAL ISSUES

A. With regard to admissibility of the cross appeal of SN BRUSSELS AIRLINES.

[9] The plaintiffs' objection aims at rejecting the cross appeal raised by the respondent since the scope of their appeal did not concern the entire judgment, rather the amount of moral damages they were awarded by the previous court. They argued therefore that the scope of the cross appeal should not be beyond any other issue than moral damages. SN

BRUSSELS AIRLINES alleges that nothing prevents its cross appeal to extend to other issues of the entire judgment.

[10] According to the provisions of 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, the respondent may also raise a cross appeal, therefore it does not provide for its limitation to grounds of appeal. The court finds that nothing bars the cross appeal to cover other grounds of the judgment, provided they have been subject to debate at the first instance.

[11] This motivation concurs with the opinion of the law scholars who explain that the cross appeal is incident to the main appeal, and is raised by the respondent at appeal level, in case of dissatisfaction with the entire judgment¹. Therefore it implies his/her dissatisfaction can be beyond the grounds of appeal.

B. With regard to the procedure in which the claim was filed before the Commercial High Court.

[12] As argued before the Commercial High Court, SN BRUSSELS AIRLINES states that the plaintiffs were seven different people, who jointly filed the claim without defining neither the nature nor the capacity of that association to file a claim. Furthermore, it added that their claims were joined and recorded to the same number without the president court order.

[13] The counsel for the appellants replied that there was no legal provision violated, because even if the claim filed was common for all, each one paid his/her own court fees.

[14] The court realises that the fact that the appellants hired one advocate who filed their claims jointly, while each one of them paid his/her own court fees, does not violate the law. Therefore, these claims comply with the provision of article 20 of the Law N°18/2004 of 20/06/2004 relating to the civil, commercial, labour and administrative procedure which provides 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”. Hence, the arguments that the appellants filed their claims without capacity since they did it as an association, lacks merit because they did not consider themselves as an association nor behave as such, rather each one has appeared personally.

[15] Therefore, the court realises that there is no proven ground with regard to the filing of the claim likely to result in the inadmissibility of the claims that have been filed, while arguing that their inadmissibility may rely on the fact that they have been joined without the president’s court order; this ought not to be a ground for rejecting the claim filed in accordance with the procedure, rather, there should have been a request for the quashing of the judgment, in case it was proven that joining the claims without the president’s court order constitutes a substantial irregularity; which was not requested by SN BRUSSELS AIRLINES.

C. Whether the Rwandan law were applicable to this case.

[16] SN BRUSSELS AIRLINES argues that in accordance to article 19 of its general rules governing transport contract of passengers and goods, the contract concluded between SN

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”. See Melina Douchy-Oudot: “Procédure civile”, 2ème édition, Paris, 2006, p.366, N°638.

BRUSSELS AIRLINES and the plaintiff is governed by the Belgium law since that company is registered in that country, and those general rules are mentioned on the air tickets of passengers even if they may not be aware of them, but they are available whenever needed.

[17] Based on this, SN BRUSSELS AIRLINES argues that the claim filed to the Commercial High Court was time barred, since basing on the Belgium law, the statute of limitation for such claims is one year.

[18] Article 28 of the Warsaw Convention relating to *International Carriage by Air, Signed at Warsaw on 12 October 1929*, ratified by both Rwanda and Belgium, superior to national laws, states in its first paragraph that with regard to the forum, the plaintiff may choose the court of the carrier's resident, headquarters, the place of the branch where the contract was signed, or the place of destination of passengers. Furthermore, it states that the applicable law is that of the seized court.

[19] It is therefore evident that the fact that the plaintiffs opted to seize the Rwandan courts as recognized by the above mentioned international convention, it is indisputable that the seized court was competent, and the Rwandan law should be applicable, therefore, the arguments that the general rules of that company has to be referred to lacks merit, especially that SN BRUSSELS AIRLINES admits also that they might not have accessed them.

[20] Even with regard to the statute of limitation, the defendant argues that it is the Belgium law which should be referred to and be decided that it elapses within one year. However, article 29 of the Warsaw convention mentioned above, explains that the prescription of the claim is two years, and its computation shall be determined by the law of the seized Court, therefore the appeal of SN BRUSSELS AIRLINES requesting for the application of the Belgium law has no basis.

D. With regard to the claimed damages.

[21] The plaintiffs appealed to the Supreme Court arguing that the previous court did not take into consideration the prejudice they suffered and awarded them insufficient damages amounting to 1,500 Euros, therefore, they claim 15,000Euros each as they did, since they find it reasonable and they claim the counsel fees amounting to 10% of the requested damages.

[22] They explain that the amount of these damages is based on the profound damage they suffered due to the act of SN BRUSSELS AIRLINES which waited until the day they were supposed to travel to Kigali and informed them that it had cancelled the flight. However, it transported other passengers apart from them to their destination with other airplanes, promising them that in case they reach Kampala or Nairobi it would get for them other means. Upon their arrival, it did not respect the promise and this led them to look for accommodations and meals on their own expenses, which was difficulty since it was not planned. They say that it belittled them as if they are not human beings.

[23] SN BRUSSELS AIRLINES argues that it should not pay damages since the failure to take those passengers to Kigali was due to the Rwandan government's decision to ground its airplane in Kigali while it was the one which should have flown passengers from Nairobi/Kampala, and this has been a force majeure which hindered the travel Kampala/Nairobi to Kigali. However it accepted to pay back only the money they paid for tickets corresponding to the failed travels together with expenses they incurred substantiated by documents. SN BRUSSELS AIRLINES denies to have treated them differently from other passengers.

[24] The court realizes that SN BRUSSELS AIRLINES as a transport company, had the obligation to take passengers to the destination agreed upon (the obligation of result), therefore, it cannot refrain itself from those obligations under allegations that there has been force majeure as provided for by the Warsaw convention that the carrier is not held liable for damages if he/she proves that he/she did much as possible to mitigate eventual damages. However, as it was held by the previous court, the carrier did not prove the effort to get other means to take the passengers to the agreed destination, even if this would be expensive.

[25] With regard to the amount of the reasonable moral damage, considering the prejudice suffered by the plaintiffs due to the carelessness of the carrier who would have found the solution to fulfill its obligations; the court realizes that every plaintiff should be awarded more damages in addition to those awarded by the previous court, to amounting to 2,000,000Frw.

[26] With regard to the lawyer's fees, the court realizes that those fees have to be awarded to the plaintiffs since they hired a lawyer in this case, but because those they claim amounting to 10% of the damages is too excessive, and in its discretion, the court awards 300,000Frw each at this level in addition to 1,000,000Frw awarded by the previous court.

III. DECISION OF THE COURT

[27] It decides to admit the appeal lodged by Umwari Marie Agnès, Gakwaya Innocent, Gakirendekwe Panthaléon, Nsengiyumva Sylvestre, Senyana Marie Noel, Somayire Rubona Freddy and Spinette Génèvieve, and the cross appeal of SN BRUSSELS AIRLINES since they have been filed in accordance with legal procedures;

[28] It decides that the appeal of Umwari, Gakwaya, Gakirendekwe, Nsengiyumva, Senyana, Somayire Rubona and Spinette has merit on some grounds and that of SN BRUSSELS AIRLINES is without merit;

[29] It decides that Umwari, Gakwaya, Gakirendekwe, Nsengiyumva, Senyana, Somayire Rubona and Spinette wins the case while SN BRUSSELS AIRLINES loses;

[30] It orders SN BRUSSELS AIRLINES to pay to each one of the plaintiffs mentioned above moral damages amounting to 2,000,000Frw and 1,300,000Frw for counsel fees, all totalling 3,300,000Frw, failure to pay it within the period of one month, this money will be taken from its property through government coercion;

[31] It orders it to pay 924,000Frw of prorated fee amounting to 4% of the total damages to be paid (23,100,000Frw), failure to pay within the period of one month, this amount will be taken from its property through government coercion;

[32] It orders it to pay court fees amounting to 41,700Frw within the period of eight days, failure of which it will be taken from its property through government coercion;

[33] It overrules the decision of the appealed judgment.