

## SORAS ASSURANCES GENERALES Ltd v. TROMEA Ltd

[Rwanda – RCOMAA0020/16/CS (Mukanyundo, P.J., Kanyange and Ngagi, J.) October 21, 2016]

*Commercial procedure – Civil action for damages – Insurance contract – The applicability of the principle according to which the criminal proceeding takes precedent over civil proceeding – Even though the principle according to which the criminal proceeding takes precedent over civil proceeding is of public order, this is not enough for it to be applied in any case, because pursuant to the law, damages referred to must be originating from the offence – Law N°30/2013 of 24/05/2013 relating to criminal procedure, article 14 – Law N°51/2008 of 09/09/2008 relating to organisation, functioning and jurisdiction of courts, article 160.*

*Arbitration – Scope of arbitration contract – It is not regarded as if arbitrators ruled beyond the scope of the arbitration agreement when they rule on the late interest, as far as both parties agreed that arbitrators will examine the issues contained in the claimant and defendant's submissions, especially that late interests were requested for in the of plaintiff's submissions – Law N°005/2008 of 14/02/2008 relating to arbitration and conciliation in commercial matters, article 8 and 47.*

**Facts:** TROMEA Ltd concluded an insurance contract with SORAS Ltd to cover fire and theft hazards especially theft likely to be committed in TROMEA's store. Afterwards, TROMEA's minerals were stolen from its store and consequently basing on the insurance contract, it wrote to SORAS Ltd requesting for compensation.

Both parties failed to reach an amicable agreement and TROMEA Ltd referred the case to arbitration which decided that SORAS Ltd must pay the value of the stolen goods, late interests and damages for breach of contract. SORAS Ltd was dissatisfied with that decision and appealed to the Commercial High Court, which also found the appeal without merit.

SORAS AG Ltd appealed to the Supreme Court alleging that the Commercial High Court rejected its appeal on the ground that it never raised the principle according to which "criminal proceeding stays civil proceeding" before the arbitration tribunal while that principle was raised. It further argues that according to that principle, the arbitrators had to stay the hearing of the civil action as long as the hearing of the criminal case with which it relates, has not yet been closed, because this principle is of public order.

Another ground of appeal is that the Court erred in law whereby it held that SORAS AG Ltd did not provide any ground for the cancellation of the award which ordered it to pay compensation for the stolen goods. It also demonstrated that the demands of TROMEA Ltd are contrary to the law because they are not provided for by the insurance contract. Therefore the decision awarding late interests and damages for breach of contract to TROMEA Ltd was made beyond the scope of the contract.

In its defense, TROMEA Ltd argues that the principle according to which "criminal proceeding stays civil proceeding" cannot apply to this case because it has no link with the subject matter, because the claim was aimed at requesting for damages resulting from insurance contract instead of those originating from the offence.

Regarding the misinterpretation of article 47 of the law N°005/2008 relating to the scope of the arbitration contract, TROMEA Ltd explains that damages awarded to it are not contrary

to the insurance contract because if SORAS Ltd has paid on time, he wouldn't have incurred a loss. It also filed a cross appeal requesting for payment of compensation for all losses incurred, procedural fee and counsel fee. In response to the cross appeal, SORAS states that it cannot comment on it because the hearing is not yet in merit stage.

**Held:** 1. Regarding whether the principle according to which “criminal proceeding stays civil proceeding” was raised for the first time at appeal level, this is not true, as it is demonstrated in the award.

2. Thought the principle of “criminal proceeding stays civil proceeding” is of public order, this is not enough for this principle to be applied in any case, because pursuant to the law, damages referred to must be originating from the offence, whereas the claim instituted in the arbitration tribunal was aimed at requesting for damages resulting from the insurance contract. Therefore the principle cannot be applied in this case.

3. Given that both parties agreed that the arbitrators will examine the issues contained in the claimant and defendant submissions, and that it is clear that in the submissions of TROMEALtd, late interests were requested, the arbitrators did not go beyond the scope of the arbitration agreement.

**Appeal has no merit.  
Cross appeal has merit in part.**

**Statutes and statutory instruments referred to:**

Law N°30/2013 of 24/05/2013 relating to criminal procedure, article14.

Law N°005/2008 of 14/02/2008 relating to arbitration and conciliation in commercial matters, articles 8 and 47.

Organic Law N°51/2008 of 09/09/2008 determining the organisation, functioning and jurisdiction of courts, article 160.

**No case was referred to.**

**Authors cited:**

Michel FRANCHIMONT, Ann JACOBS et Adrien MASSET, Manuel de procédure pénale, 2<sup>e</sup> édition, 2006, Larcier, p.203.

## **Judgment**

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

[1] This case originates from a contract covering fire and theft insurance concluded between SORAS ASSURANCES GENERALES Ltd (herein referred to as SORAS AG Ltd) and TROMEALtd on 03/01/2014, especially theft likely to be committed in TROMEALtd's store. On 11/11/2014, TROMEALtd discovered that 14 tons of minerals worth 263,735USD were stolen from its store. Consequently basing on the mentioned contract, on 21/11/2014, TROMEALtd wrote to SORAS AG Ltd requesting for compensation of the stolen minerals, but due to disagreement between the parties the compensation did not materialize.

[2] Basing on that insurance contract TROMEIA Ltd took the matter to the arbitration. The arbitrators awarded that SORAS AG Ltd should pay to TROMEIA Ltd the value of the stolen items worth 173,236,343Frw, 12,992,726Frw for late interests and 5,000,000Frw as damages for breach of contract. SORAS AG Ltd appealed against the award to the Commercial High Court which rendered the judgment on 17/12/2015, whereby it found the appeal of SORAS AG Ltd without merit.

[3] SORAS AG Ltd appealed to the Supreme Court on the ground that the Commercial High Court erroneously interpreted the principle which states that “criminal proceeding takes precedence over civil proceeding”. He argues that, instead of linking that principle to the demands of SORAS AG Ltd, the Court held that SORAS AG Ltd did not raise that principle either before or during the hearing in the arbitration tribunal. Furthermore SORAS AG Ltd argues that the panel of arbitrators should have stayed the hearing of the civil case till the criminal one is adjudicated, because that principle is of public order and a party may raise it at any stage of the case. Again SORAS AG Ltd argues that, the Commercial High Court erred in law whereby it held that SORAS AG Ltd did not provide any ground for the cancellation of the award which are provided by article 47 of the Law relating to arbitration and conciliation in commercial matters, while it demonstrated that the demands of TROMEIA Ltd are not provided for by the insurance contract, thus, those demands are contrary to articles 20 and 22(2) of the special insurance conditions. Therefore the decision awarding late interests and damages for breach of contract to TROMEIA Ltd is beyond the scope of the contract. It states that foregoing ground is provided for by article 47(c) of the above stated Law.

[4] The case was heard in public on 26/04/2016, whereby SORAS AG Ltd was represented by Counsel Nkurunziza François while TROMEIA Ltd was represented by Counsel Bakashyaka Gérardine.

[5] After hearing of the arguments of each party, the Court found that there is the divergence of both parties on the applicability of the principle according to which “criminal proceeding takes precedence over civil proceeding” in the case relating to insurance contract covering theft. Counsel Nkurunziza argued in addition that there is a criminal case being heard by the Primary Court of Kagarama without giving details in order to establish its existence.

[6] On 10/06/2016, the court ruled that the hearing of this case will proceed after both parties have submitted to the court detailed explanations of the principle of “criminal proceeding takes precedence over civil proceeding” and its applicability in the case relating to insurance contract. It ordered also that SORAS AG Ltd should produce evidences on the existence of the criminal case pending before the Primary Court of Kagarama which it alleges to be interconnected to the one submitted to arbitration tribunal. It should produce its case number, offences prosecuted and the accused persons.

[7] The hearing was reopened on 06/09/2016, all parties represented as earlier. Each party submitted to the court what it was requested of. In addition, SORAS AG Ltd submitted to the Court the copy of judgment of the criminal case RP0643/14/TB/KMA pronounced by the Primary Court of Kagarama on 29/07/2016, whereby Habiyakare Eric and others were accused of stealing minerals from the store of TROMEIA Ltd.

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

### **A. APPEAL OF SORAS AG Ltd**

**1. Whether SORAS AG Ltd did not raise the principle of “criminal proceeding takes precedence over civil proceeding” before Commercial High Court.**

[8] Counsel Nkurunziza François Xavier, representing SORAS AG Ltd argues that the Commercial High Court refused to examine its appeal on the basis that SORAS AG Ltd did not raise the principle of “criminal proceeding takes precedence over civil proceeding” before the panel of arbitrators, either at the beginning or during the hearing moreover SORAS AG Ltd raised it as it is evident on page 9, paragraphs 32, 33 and 34 of the award. Counsel Nkurunziza François Xavier states that through the objection raised before the panel of arbitrators, SORAS AG Ltd indicated that, if that principle is not respected, there will be contradictions between the decision of the judge in criminal case and the decision in the civil case relating to compensation and damages but that the panel of arbitrators overruled the objection. He criticizes the High Commercial court that instead of examining his claim, it misconceived the facts which led to the ruling that the grounds of SORAS AG Ltd appeal lack merit.

[9] The counsels for TROME A Ltd adduced that the principle of “criminal proceeding takes precedence over civil proceeding” was raised by SORAS AG before the arbitration tribunal but that, upon its examination it was found with no merit.

## **THE OPINION OF THE COURT**

[10] As regards to establish whether SORAS AG Ltd requested the panel of arbitrators to stay the hearing of the case on compensation, filed by TROME A Ltd so that the decision may first be taken in the criminal case relating to the theft committed in TROME A Ltd’s store, which was being tried by Primary Court of Kagarama, the Court finds that SORAS AG Ltd requested the panel of arbitrators to respect the principle of “criminal proceeding takes precedence over civil proceeding” and the panel examined this objection as it is demonstrated from page 8 to page 10 of the award.

**2. Whether the fact that the panel of arbitrators did not consider the principle of “criminal proceeding takes precedence over civil proceeding” renders the award void.**

[11] Counsel Nkurunziza François Xavier who represents SORAS AG Ltd, argues that the principle of “criminal proceeding takes precedence over civil proceeding” on which he bases the appeal of SORAS AG Ltd means that, if there is a claim for damages originating from a criminal case, the civil court hearing the case on damages stays that hearing and waits for the decision of criminal court to avoid the contradictions in both decisions. He explains that, if there is a criminal case, the case for damages originating from that specific crime is stayed whenever the crime is not yet confirmed because if afterwards the offence is not established, while damages originating from it were awarded, it would be a serious problem which would lead the concerned parties into subsequent litigations. Thus, in order to avoid such consequences, it is necessary to stay the civil case until the decision in criminal case is pronounced.

[12] Counsel Nkurunziza, states that the Commercial High Court ruled that the appeal of SORAS AG which is based on article 47(2b) of the Law N°005/2008 of 14/02/2008 relating to arbitration and conciliation in commercial matters has no merit, while he demonstrated before it that the award of the arbitrators disregarded the principle of “criminal proceeding takes precedence over civil proceeding” whilst it is of public order. Had that principle been respected, the hearing of the case on compensation before the arbitration should have stayed

and await the decision in criminal case on the issue of establishing whether the theft really happened, the perpetrators and the value of stolen items.

[13] Furthermore, he states that as this principle is of public order, a party may raise it at any stage of the case even for the first time at the appeal level. He further states that the default by the Commercial High Court to examine the ground of appeal he submitted before it is a serious error because disregarding it affects the performance of the insurance contract concluded between SORAS AG Ltd and TROMEIA Ltd. This is due to the fact that the contract includes an exclusion clause which stipulates that SORAS AG Ltd is not liable in case of theft committed by a person who is related to the insured.

[14] He further argues that the arguments of the representatives of TROMEIA Ltd that it was enacted in France laws demarcating the scope of the application of the principle of “criminal proceeding takes precedence over civil proceeding” cannot be applied in this case, rather existent Rwandan law should apply because those enacted in France engage itself and that does not invalidate the principle. He insists that the arbitrators should have stayed the hearing until the decision of the primary court of Kagarama on the criminal case is taken due to interconnectivity which exists between both cases.

[15] The counsel for TROMEIA Ltd argues that the principle of “criminal proceeding takes precedence over civil proceeding” raised by SORAS AG Ltd should not be considered because it does not relate to the subject matter in this case, especially that the case submitted to arbitration was aimed at requesting that SORAS AG Ltd to honor the insurance contract it concluded with TROMEIA Ltd, (article 18 of special insurances conditions). They find that the subject matter is not about damages originating from the crime (action en réparation d’une infraction) and that parties in both cases are not the same. They further argue that TROMEIA Ltd did not sue for damages in that criminal case nor does it have a criminal case with SORAS AG Ltd, even none of their employees is being prosecuted in that case. Thus, there is no reason that SORAS AG Ltd could not pay.

[16] They continue explaining that the contract TROMEIA Ltd concluded with SORAS AG Ltd provides for the liability of each party in case of a sinister. TROMEIA Ltd fulfilled its obligations, therefore SORAS AG Ltd should also fulfill its obligations without complaints by requesting to wait for a case, which it does not even know when it will be disposed off, and if it does not accept the amount it was asked to pay it is up to it to request for a counter expertise. They further argue that the arguments of SORAS AG Ltd that the thieves were not known is not true because the arbitrators examined this issue and found that, they were not employees of TROMEIA Ltd but of TOPSEC. Therefore since the thieves had no employment contract with TROMEIA Ltd (it does not pay their contribution for pension scheme to RSSB or paying for them taxes to RRA), there is no reason that the arbitrators should have stayed the hearing of TROMEIA Ltd case which relates to damages originating from the insurance contract because it has no link with the criminal case.

## **THE VIEW OF THE COURT**

[17] The principle of “criminal cases have precedent over civil case” raised by SORAS AG Ltd is provided for by article 14 of the Law N°30/2013 of 24/05/2013 relating to criminal procedure which states that “Proceedings in civil action shall be suspended until the criminal case is finally adjudicated if the criminal action was instituted before or in the course of civil

proceedings in accordance with the provisions of the Organic Law determining the organisation, functioning and competence of courts”.

[18] Article 47(2° b) of the Law N°005/2008 of 14/02/2008 relating to arbitration and conciliation in commercial matters, which SORAS AG Ltd bases its appeal, provides that, “An arbitral award decided by an arbitration may be set aside by the court specified in article 8 of this Law only if; the award is in conflict with the public security of the Republic of Rwanda”.

[19] Regarding the ground of appeal of SORAS AG Ltd that its claim should be admitted because the award of the arbitrators is contrary to public order, given that they refused to stay the hearing of the civil case submitted by TROME A Ltd to await for the decision in criminal case relating to the theft which took place in the store of TROME A Ltd, the Court finds that the statement of the counsel for SORAS AG Ltd that the principle of “criminal cases have precedent over civil case” is of public order has merit. This is emphasized by the opinions of Michel FRANCHIMONT, Ann JACOBS and ADRIEN MASSET, in their book *Manuel de procédure pénale*<sup>1</sup> who base on the decisions of the judgments rendered by the court of cassation in Belgium<sup>2</sup> whereby it was decided that this principle is of public order therefore parties to the case cannot avoid its applicability and even the judge hearing the civil case relating to damages should raise it on his own motion. These scholars explain that the principle of “criminal case has precedent over civil case” being of public order is respected when all requirements are met; which implies that a civil court on its own motion can stay the hearing till the criminal case is over even though no party raised the objection.

[20] Another issue to be examined is whether the principle of “criminal case takes precedence over civil case” being of public order is enough to be applied to this specific case. The examination of this issue dictates the determination of the nature of civil claim provided in article 14 of the Law N°30/2013 of 24/05/2013 mentioned above and the answer is found in article 160 of the Law N°51/2008 of 09/09/2008 relating to organisation, functioning and jurisdiction of courts which provides that “Civil claims arising out of a criminal offence are those instituted to recover damages for loss caused by the offence. A person aggrieved by the offence or his/her beneficiaries shall have the right to file a civil suit for damages”.

[21] Regarding the filing of the claim for damages resulting from an offence, article 161 of the above mentioned law states that, “A claim for damages arising out of a criminal offence may be heard at the same time by the same court hearing the criminal case. It may also be instituted separately”. That principle of the criminal case staying the hearing of the civil case is applied if:

1. The criminal case was filed before the civil suit
2. The criminal case was filed during the proceedings of a civil suit. In such a situation, the same judge who hears the civil suit shall also hear the criminal case.

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<sup>1</sup> Michel FRANCHIMONT, Ann JACOBS et Adrien MASSET, Manuel de procédure pénale, 2e édition, 2006, Larcier, p.203, D. Quant au caractère de la règle du criminel tient le civil en état, les auteurs ci-hauts cités disent “qu’elle est d’ordre public”. Si les conditions sont remplies, la surséance doit être prononcée même d’office et ce, à peine de nullité. p.203, D.

<sup>2</sup> La Cour de Cassation a admis que la règle du criminel tient le civil état est “d’ordre public”, voir Cass., 23/03/1992, Pas., I, p. 664 ; et que “les parties ne peuvent pas y renoncer et le juge civil doit même surseoir d’office”, voir Cass., 01/02/1951, Pas., I, p.357.

3. During the course of civil proceedings, there arises a criminal incidental proceeding, the judge who hears the civil suit shall also try that criminal incidental proceeding. However, where the criminal incidental proceeding herein above mentioned in the point 3 of the paragraph 2 of the present article is within the jurisdiction of a superior Court, both the civil and the criminal matter shall be forwarded together to that Superior Court for joint trial.

A Criminal claim shall not cause stay of a civil claim if they are not interconnected.

[22] On the issue of determining whether the claim for damages submitted by TROMEIA Ltd to the arbitration tribunal is the one provided for by article 160 mentioned above, the documents in the case file indicate that the claim which TROMEIA Ltd submitted to arbitration tribunal aimed at requesting for the damages resulting from the insurance contract it concluded with SORAS AG Ltd, the income lost if it had sold the stolen minerals, late interest because SORAS AG Ltd delayed to pay, damages resulting from breach of contract and other various damages

[23] The claim of TROMEIA Ltd as explained above is different from the claim for damages provided by the previously mentioned article 160 because even though the offence of theft was committed and suspects were prosecuted in criminal case, the Court finds that damages which TROMEIA Ltd sued for in the arbitration tribunal does not originate from the offence of theft committed against TROMEIA Ltd rather they result from the insurance contract it concluded with SORAS AG Ltd. Thus, the provisions of article 14 of the Law N°30/2013 of 24/05/2013 mentioned above which states that proceedings in civil action shall be suspended until the criminal case is finally adjudicated, cannot be applied to this case, because as decided by the arbitration tribunal in its award there is possible contradictions between decisions taken by both courts since damages claimed before commercial case relate to insurance contract.

[24] The Court therefore finds that the fact that the principle of "criminal cases have precedent over civil case" is of public order, this sole nature is not itself enough for this principle to be applied in any case, because pursuant to article 160 mentioned above, damages referred to must be originating from the offence, which is different in this case.

[25] Also the legal scholars, Michel FRANCHIMONT, Ann JACOBS and ADRIEN MASSET mentioned above concur with the above motivation, whereby they state that the civil action which obliges the judge who is seized of it separately to stay the proceedings, is that which relates to the criminal case instituted before or during the hearing<sup>3</sup>.

[26] In accordance with the reasons stated above, the Court finds that the ground of appeal of SORAS AG Ltd lacks merit, because it is not one of the requirements stated by the provision of article 47(2b) of the Law N°005/2008 of 14/02/2008 relating to arbitration and conciliation in commercial matters which is relied on by SORAS AG Ltd to request the quashing of the award of the arbitration tribunal.

### **3. Whether the demands of TROMEIA Ltd exceed what is provided for by the insurance contract.**

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<sup>3</sup> Quant à la portée du principe du "criminel tient le civil en état", nous lisons sous la plume de Michel FRANCHIMONT, Ann JACOBS et Adrien MASSET, que "l'action civile, qui oblige le juge qui en est saisi séparément à surseoir à statuer, est celle qui est relative à des points qui sont communs à une action publique intentée avant ou en cours de l'exercice". p.202, C.

[27] Counsel Nkurunziza François Xavier representing SORAS AG Ltd states that another ground for the appeal against the decision of the Commercial High Court rejecting to annul the award of the arbitration tribunal is that the court misinterpreted article 47 of the Law N°005/2008 mentioned above by holding that SORAS AG Ltd did not produce any ground among those provided for by that article for the annulment of the award of the arbitration tribunal, while in its appeal, SORAS AG Ltd indicated the grounds which demonstrated that the award of arbitration tribunal was contrary to the provisions of insurance contract concluded with TROMEIA Ltd. Furthermore, he argues that they explained to the Commercial High Court that the demands of TROMEIA Ltd are not provided for in insurance contract and are contrary to articles 20<sup>4</sup> and 22<sup>5</sup> of special insurance conditions because the award of arbitrators held SORAS AG Ltd liable twice for the same issue, since he was held liable for late interest of 12,992,726Frw and 5,000,000Frw for interests and damages of breach of contract. This implies that the award made was beyond the scope of the provisions of insurance contract. This making of the award beyond the scope of the contract which is provided for in article 47(1 c) of the Law N°005/2008 of 14/02/2008 mentioned above.

[28] Counsel for TROMEIA Ltd argue that the argument of SORAS AG Ltd is not true because the award of arbitrators awarding compensation and damages to TROMEIA Ltd is not contrary to the insurance contract and that the arbitrators based on articles 20 and 22 mentioned above and denied to award to TROMEIA Ltd all damages it claimed for by stating that only the value of stolen items are to be compensated. They continue by arguing that late interest awarded to TROMEIA Ltd are grounded because if SORAS AG Ltd had respected the contract and paid within 30 days as specified in article 27 of the “special insurance conditions”, TROMEIA Ltd wouldn't have incurred the loss. Therefore for SORAS AG to have been charged with late interests and damages based on articles 137<sup>6</sup> and 138<sup>7</sup> of the Law N°45/11 of 25/11/2011 relating to contract, has merit.

## **THE VIEW OF THE COURT**

[29] Article 47 of the Law N°005/2008 of 14/02/2008 relating to arbitration and conciliation in commercial matters, provide that "an arbitral award decided by an arbitration tribunal may be set aside by the court specified in article 8 of this Law only if: the party seeking cassation furnishes proof that: 1°(c) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside.

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<sup>4</sup> L'assurance ne peut pas être une cause de bénéfice pour l'assuré, elle ne lui garantit que la réparation de ses pertes réelles, abstraction faite de toute privation de jouissance, de bénéfice ou des intérêts.

<sup>5</sup> Si, de mauvaise foi, le Souscripteur ou l'Assuré fait de fausses déclarations, exagère le montant des dommages, prétend détruits ou disparus des objets n'existant pas lors du sinistre, dissimule ou soustrait tout ou partie des objets assurés, ne déclare pas l'existence d'autres assurances portant sur les mêmes risques, emploie comme justification des documents inexacts ou use de moyens frauduleux, l'Assuré est entièrement déchu de tout droit à indemnité pour ce sinistre.

<sup>6</sup> The aggrieved party has right to damages from the party failing to perform his/her contractual obligations, unless the claim for damages has been suspended or withdrawn.

<sup>7</sup> The aggrieved party has right to damages based on his/her expected interests calculated in accordance with: 1° the loss in the value by the aggrieved party, based on the other party's obligations caused by non-performance or inadequacy; 2° any other loss caused by the breach of the contract, including any other incidental loss; 3° any cost or other loss that the breaching party has avoided by the non-performance of his/her obligations.



[30] Regarding the grounds of appeal of SORAS AG Ltd that the award of arbitrators should be nullified because in awarding TROMEIA Ltd the interests and damages for breach of contract it was made beyond the scope of the contract, the Court finds that argument groundless because in that award both parties agreed that arbitrators shall examine the plaintiff submissions as well as those of the defendant. It is also obvious in TROMEIA Ltd's submissions as plaintiff that he requested for late interests (see paragraph 55 of the award), and also requested for damages for breach of contract (see paragraph 61), thus arbitrators did not go beyond the scope of arbitration contract because if SORAS AG Ltd was not satisfied the decision on the merit of the case taken by arbitrators, this should not imply that they ruled beyond the scope of the arbitration agreement instead it is apparent that SORAS AG Ltd is confusing arbitration agreement with "special conditions of insurance".

[31] Based on those grounds, the Court finds that the award of arbitrators cannot be quashed because damages and interests were awarded on the request of TROMEIA Ltd as stipulated by the arbitration agreement. Therefore, this ground of appeal of SORAS AG Ltd does not also fall within the grounds provided for in article 47(1c) of the Law N°005/2008 of 14/02/2008 relating to arbitration and conciliation in commercial matters.

#### **4. The cross appeal filed by TROMEIA ltd**

[32] The counsel for TROMEIA Ltd argues that it has been a year and seven (7) months since TROMEIA Ltd goods were stolen, but unfortunately SORAS AG Ltd has persistently refused to pay for the compensation. Therefore, they pray the Court to rely on articles 137 and 138 of the Law N°45/11 of 25/11/2011 governing contracts to establish the liability of SORAS AG Ltd for the loss worth 31,182,541Frw incurred by TROMEIA Ltd and to pay 2,000,000Frw of procedural and counsel fee.

[33] Counsel Nkurunziza representing TROMEIA Ltd states that he cannot comment on the appeal of TROMEIA Ltd as the hearing of the case is not yet in merit because the legal issue in this case consists of whether the award of the arbitration tribunal should be nullified.

### **THE VIEW OF THE COURT**

[34] Regarding the loss worth 31,182,541Frw incurred by TROMEIA Ltd, the Court finds that this ground of appeal cannot be examined because the Court has not yet heard the case in merit. However, concerning the procedural and counsel fee requested by TROMEIA Ltd, the Court finds that because it hired the services of advocates be represented at this level, it is awarded 1,000,000Frw in the court's discretion because the 2,000,000Frw it requested for is excessive.

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

[35] It holds that the appeal of SORAS AG Ltd lacks merit;

[36] It holds that the cross appeal filled by TROMEIA Ltd has merit in part;

[37] It orders SORAS AG Ltd to pay procedural and counsel fee, all amounting to 1,000,000Frw awarded at this level to TROMEIA Ltd.