

PHOENIX OF RWANDA INSURANCE COMPANY LTD v. TRANSCORP

[Rwanda COURT OF APPEAL – RCOMAA 00096/2018/CA (Mukanyundo, P.J., Ngagi and Kanyange, J.) July 19, 2019]

Laws governing contracts – Insurance contract – When an insurance company fails to comply with regulations of insurance is sanctioned with administrative penalties, however, it is not a ground of terminating a legally concluded contract.

Laws governing contracts – Insurance contract – Proof of payment – “Vignettes” is not proof of payment, rather, it’s proof of insurance of the vehicle, the one who issued it, shall be liable when an accident occurs regardless of whether the premium was paid or not.

Facts: PHOENIX OF RWANDA INSURANCE COMPANY Ltd offered insurance policy on credit to the company called TRANSCORP for its cars on various occasions, both parties concluded a contract on the loan of insurance policy, they also agreed on the period for which the loan should have been paid. The insured breached the contract because it failed to pay all premiums, and the insurer filed a suit to the Commercial Court of Nyarugenge claiming to be paid, that Court held that the claim has no merit.

PHOENIX was not contented with the rulings and appealed to the Commercial High Court stating that TRANSCORP affirmed to the court that when the insured does not fully pay the premiums, that the contract is instantly terminated, while it is not true because the insurer has the right of choice, it added that insurance may be given on loan. The Commercial High Court decided that the appeal lacks merit, and It sustained the rulings of the appealed judgment.

PHOENIX appealed again before the Court of Appeal stating that the Commercial High Court confused the contract of insurance with the laws governing the loan because there is no law prohibiting to offer insurance on loan, it also states that both parties concluded a loan contract of the vehicles insurance and *vignettes* were issued, that they agreed that the premiums will be paid progressively, that all these prove that TRANSCORP has debt, that it is also proven by a document titled "statement of unpaid premium" which was signed by both parties as a proof a loan based on insurance contract.

In its defense, TRANSCORP states that the Commercial High Court confused insurance contract with laws governing loans, it argues that this ground of appeal should not be considered because the regulations of the National Bank of Rwanda prohibit the insurance companies to offer insurance by credit, hence, it states that if PHOENIX would be sanctioned if it breached those regulations.

TRANSCORP also states that the National Bank of Rwanda is in charge of insurance companies but there is an exception to public institutions because they can be offered insurance by credit for the period of six months only.

With regard to the elements of evidence to prove the amount of the debt claimed, PHOENIX explains that TRANSCORP used to pay part of the premiums when its cars were covered, that *vignettes* were also issued though there was no payment, that this is proven by bank statement and

a document titled Statement of Unpaid Premiums/ After Renewal in 2016, that this proves that TRANSCORP paid progressively, thus PHOENIX prays to the Court for ordering the payment of debt and its interests calculated on 21% from the moment of the last warning until the debt paid.

For TRANSCORP, it keeps denying the debt which is being claimed stating that they did not conclude the loan agreement because it would not have been given vignettes without first having paid, that this is the proof that it paid, it adds that it is still dragged in the unnecessary lawsuit, hence it claims damages for that.

Held: 1. When an insurance company fails to comply with regulations of insurance is sanctioned with administrative penalties, however, it is not a ground of terminating a legally concluded contract.

2. “Vignettes” is not proof of payment, rather, it’s proof of insurance of the vehicle, the one who issued it, shall be liable when an accident occurs regardless of whether the premium was paid or not.

**The appeal has no merit.
Court fees to TRANSCORP.**

Statutes and statutory instruments:

Law N° 45/2011 of 25/11/2011 governing contracts, article 64.

Regulation N°05/2009 of 29/07/2009 on licensing requirements and other requirements for carrying out insurance business, article 23.

No case referred to.

Judgment

I. BACKGROUND OF THE CASE

[1] This case started before the Commercial Court of Nyarugenge whereby PHOENIX OF RWANDA INSURANCE COMPANY Ltd sued TRANSCORP for the debt worth 83.739.236Frw originating from the insurance of its cars which PHOENIX gave it on different occasions from 2014 up to 2017, it states that premium was not fully paid, that the arrears worth 83.739.236Frw.

[2] On 18/05/2018, the Commercial Court of Nyarugenge rendered the judgment RCOM 01140/2017/TC/NYGE holding that PHOENIX OF RWANDA INSURANCE COMPANY Ltd’s claim has no merit, the Court ordered it to pay TRANSCORP, 100.000Frw for procedural fees and 500.000Frw for counsel fees.

[3] PHOENIX OF RWANDA INSURANCE COMPANY Ltd was not satisfied with the rulings of the judgment and appealed to the Commercial High Court stating that TRANSCORP affirmed to the court that when the insured does not pay the premiums, that the contract is instantly terminated while it is not true because the insurer has right of choosing what he can opt for, whether warning the insured, claiming the arrears or insurance given or requesting for the termination of

the contract, that when there is no reason for terminating the contract, does not prevent the insurer to claim payment after one month of notification as provided by article 14 of the law N° 20/75 of 20/06/1975, therefore, the insurance may be given on the loan.

[4] The Commercial High Court rendered the judgment RCOMA 00450/2018/HCC on 20/09/2018, holding that PHOENIX OF RWANDA INSURANCE COMPANY's appeal lacks merit, It sustains the rulings of the appealed judgment.

[5] That court found that PHOENIX OF RWANDA INSURANCE COMPANY Ltd as professional in insurance knowing that in its works it has to comply with regulations of the National Bank of Rwanda, the fact that it erred and offering the insurance on the debt, it should not have filed a claim in the court which has obligations to help in compliance with the laws, praying to the court for ordering to honour what is unlawful.

[6] PHOENIX OF RWANDA INSURANCE COMPANY Ltd appealed to the Court of Appeal stating that the Commercial High Court confused insurance contract with laws governing loans because there is no law prohibiting to offer debt, it adds that the Court did not comply with the law governing the contracts especially in its article 4 which provides the requirements for the contract to be valid. In its appeal, PHOENIX OF RWANDA INSURANCE COMPANY Ltd also states instead of examining proofs of TRANSCORP's payment, the Commercial High Court examined the regulations of the National Bank of Rwanda disregarding the hierarchy of the laws and that, those regulations do apply to the clients, but the National Bank of Rwanda vis a vis insurance companies.

[7] The case was heard in public on 14/05/2019 and 26/06/2019, PHOENIX OF RWANDA INSURANCE COMPANY Ltd being represented by Counsel Buhuru Pierre Célestin and Counsel Nsengiyumva Colette, while TRANSCORP was represented by Counsel Kayitare Serge together with Counsel Twiringiyemungu Joseph, counsel for TRANSCORP state that they withdrawal the objection relating to lack of jurisdiction of the Court of Appeal.

II. ANALYSIS OF THE LEGAL ISSUES.

The fact that PHOENIX OF RWANDA INSURANCE COMPANY Ltd offered TRANSCORP insurance on the debt implies that the latter should not pay.

[8] Counsel for PHOENIX OF RWANDA INSURANCE COMPANY Ltd state that the Commercial High Court confused the contract of insurance with that of the loan because there is no law prohibiting offering a debt. They explain that the contract concluded between PHOENIX OF RWANDA INSURANCE COMPANY LTD and TRANSCORP was an insurance contract because the former covered the latter's cars on the debt basing their list and it offered vignettes valid for whole one year, that they agreed that the payment will be made progressively because of good working relationship they had before, they rely on that to prove that TRANSCORP has a debt to PHOENIX OF RWANDA INSURANCE COMPANY Ltd. They state that TRANSCORP denies insurance debt because it asks to prove it under the pretext that it cannot be given vignettes without payment but it does not produce proofs of payment.

[9] They keep stating that regarding insurance contract, the premium is paid within 30 days, if not, the contract may be suspended, this implies that when the insurer does not pay within that period of 30 days, it has debt. They state that concerning the case at hand, statement of unpaid premium signed by both parties which are in the case file is proof of the debt that TRANSCORP has to PHOENIX OF RWANDA INSURANCE COMPANY Ltd which is based on the debt of insurance agreement, that on the first instance, the judge was mistaken by stating that PHOENIX OF RWANDA INSURANCE COMPANY Ltd does not produce the contract of the loan.

[10] With regard to the regulations of the National Bank of Rwanda, prohibiting the provision of insurance on the debt, the regulations considered by the Commercial Court, counsel for PHOENIX OF RWANDA INSURANCE COMPANY Ltd states that they refer to how the National Bank of Rwanda cooperates with insurance companies and not with the agreement concluded between insurance companies and their clients. They further state that those regulations were signed by the Governor of the National Bank of Rwanda and they can apply to others when are signed by the President of the Republic or Minister, that what the National Bank of Rwanda does when an insurance company breaks them, is to simply apply sanctions.

[11] Counsel for TRANSCORP argues that concerning the Commercial High Court' mixing up of the insurance and laws governing loans, this ground of appeal lacks merit because the regulations N° 05/2009 of the National Bank of Rwanda prohibits insurance companies (including the appellant) to provide insurance on the debt, if PHOENIX OF RWANDA INSURANCE COMPANY Ltd would have breached those regulations, should face sanctions and when it agrees that it did not comply with them, it should not pray to the Court to validate what it did and be sanctioned by the National Bank of Rwanda later, the court should, first of all, examine whether the contract was lawfully concluded.

[12] They also state that the National Bank of Rwanda is the regulator, that's why it puts in place regulations which are published in the official gazette, this implies that the companies' clients are also concerned but there is an exception to public institutions because they can be given insurance on debt but for six months only. They add that long term debt cannot replace the provisions of the law, that this issue should not be debatable while the Commercial High Court affirmed that though proofs of the debt would be produced, it should not be considered because the contract was unlawfully concluded because the regulations mentioned above also apply to the clients and not to the National Bank of Rwanda.

[13] They explain that from 2014 PHOENIX OF RWANDA INSURANCE COMPANY Ltd had working relation with, thereafter, TRANSCORP's truck had an accident in Uganda, and PHOENIX OF RWANDA INSURANCE COMPANY Ltd refused to pay, due to that reason, TRANSCORP sought another insurance, from that moment PHOENIX OF RWANDA INSURANCE COMPANY Lt started to claim payment of arrears from 2014, they state that the truth was that there were no arrears because if it was the case, the insurer would not have continued to grant insurance to the extent of millions being claimed.

DETERMINATION OF THE COURT

[14] Article 64 of the Law N° 45/2011 of 25/11/2011 governing the contracts provide that contracts made in accordance with the law shall be binding between parties.

[15] Article 23, paragraph 5 of the regulation N°05/2009 of 29/07/2009 on licensing requirements and other requirements for carrying out insurance business provides that debt of premium is not authorized.

[16] Article 6 of regulation of the National Bank of Rwanda N° 03/2017 of 22/02/2017 on administrative and pecuniary sanctions applicable to insurers stipulates that without prejudice to the provisions of Articles 3 and 5 of this regulation, where a private insurer or a public insurer where applicable fails to comply with the provisions of the Law governing insurance business or its implementing regulations instructions, directives, and decisions of the Central Bank, relevant sanctions specified in the appendix may apply. Whereas part 9 of the appendix states that issuing an insurance policy on credit to an individual policyholder is sanctioned to payment of 0.5% of premium receivables of every quarter.

[17] The documents of the case file demonstrate that on 02/12/2014, PHOENIX OF RWANDA INSURANCE COMPANY Ltd concluded with TRANSCORP an insurance agreement for the latter's 61 vehicles, both parties agree that they kept amending that agreement every year up to 2017. The contract also stipulates that TRANSCORP should have paid premiums within 30 days from the moment of commencement of the contract or from when it is amended, that when that period is exceeded without payment, PHOENIX OF RWANDA INSURANCE COMPANY Ltd had the option of terminating the contract and TRANSCORP be ordered to pay a premium equivalent to that period, that when the issue arises before terminating the contract, the insurer shall be paid the full premium¹.

[18] The court finds, regulations of the National Bank of Rwanda N° 05/2009 of 29/07/2009 stipulates that that debt of premium is not authorized, this implies that PHOENIX OF RWANDA INSURANCE COMPANY Ltd should not have issued an insurance policy on credit. The Court also finds that article 6 of regulation of the National Bank of Rwanda N° 03/2017 of 22/02/2017 on administrative and pecuniary sanctions applicable to insurers states that where a private insurer or a public insurer where applicable fails to comply with the provisions of the Law governing insurance business or its implementing regulations instructions, directives and decisions of the Central Bank, relevant sanctions specified in the appendix may apply. Whereas part 9 of the appendix states that issuing an insurance policy on credit to an individual policyholder is sanctioned to payment of 0.5% of premium receivables of every quarter.

[19] The Court finds, analysis of articles of regulations mentioned above, it is evident that those regulations were put in place for insurance companies and does not concern the contract concluded between those companies and their clients, rather, when an insurance company fails to comply with those regulations such as issuing an insurance policy on credit does not affect contract lawfully concluded in accordance with article 4 of the law N°45/2011 of 25/11/2011 governing contracts², rather, administrative sanctions shall apply and the contract remains valid, if not, it would be illicit enrichment for the insured who was covered on debt.

¹ It is hereby expressly agreed cover under this Policy is granted subject to full payment of the premium within 30 days from inception/renewal. It is further declared and agreed that this Policy will be voidable at the insurer discretion if the premium is not paid within 30 days and the insured shall be compelled to pay a premium for the period he has been on the cover provided that if a claim has arisen before termination is enforced, the full premium shall be due to insurer.

² The general requirements for the formation of a contract are the following:

[20] As far as this case is concerned, the Court finds, the fact that PHOENIX OF RWANDA INSURANCE COMPANY Ltd issued an insurance policy on credit, is a fault which is sanctioned by administrative sanctions that aiming to avoid that insurance company becoming bankrupt but it does not invalidate the contract between parties which was concluded pursuant to article 4 of the law N°45/2011 of 25/11/2011 governing contracts mentioned above, so that TRANSCORP may invoke it in refusing to honour the provisions of the contract, thus, there is a need of examining whether there are elements of evidence to prove the debt of insurance which TRANSCORP might have to PHOENIX OF RWANDA INSURANCE COMPANY Ltd.

[21] The Court also finds TRANSCORP's statement that PHOENIX OF RWANDA INSURANCE COMPANY Ltd should have terminated the contract within 30 days after the failure of payment because in the contract it was provided that at PHOENIX OF RWANDA INSURANCE COMPANY Ltd's discretion the contract may be terminated and also article 14 Decree law N° 20/75 of 20/06/1975 relating to insurance, in general, does not strictly obligate the insurer to terminate the contract.³

2. Whether there are elements of evidence to prove that the debt of TRANSCORP to PHOENIX OF RWANDA INSURANCE COMPANY Ltd

[22] Council for PHOENIX OF RWANDA INSURANCE COMPANY Ltd states that some of the premiums used to remain every moment of securing TRANSCORP's cars because of good practice among them, arrears are amounting to 83.739.236Frw. They state, the fact that TRANSCORP was given vignettes for its vehicles without paying premiums was due to good practice they used to have and that there is a bank statement which demonstrates that TRANSCORP paid progressively and a document titled Statement of Unpaid Premiums/ After Renewal in 2016.

Council for TRANSCORP states that there is no loan agreement concluded with PHOENIX OF RWANDA INSURANCE COMPANY Ltd and that it has even no debt for the former because it would not have been given vignettes without payment, the fact that it found those vignettes implies that it paid. Concerning the issue of proofs of payment, they argue that because of vignettes there is a presumption that the payment was done. Whereas regarding a document titled Statement of Unpaid Premiums/ After Renewal in 2016 of 53,913,427 Frw which was approved by TRANSCORP, that signatories are those indicated in company statute, wherever TRANSCORP may open a branch.

[23] Regarding a document which indicates arrears of premium produced by PHOENIX OF RWANDA INSURANCE COMPANY Ltd as proof, that it was signed by TRANSCORP, council for the latter denies it.

DETERMINATION OF THE COURT

[24] Article 3 of the Law N° 15/2004 of 12/06/2004 relating to evidence and its production provides that each part has to prove the truthfulness of his/her argument. Article 12, paragraph one

¹ mutual assent; ² capacity to contract; ³ object matter of the contract; ⁴ licit cause

³ when a month elapses the insurer may opt for claiming the payment or requesting for the termination of the contract.

of Law No 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides that the claimant must prove a claim, failing to do so, the respondent wins the case. Paragraph 2 provides that likewise, a party who alleges that he/she has been discharged from an obligation established by evidence must justify the cause as a result of which the obligation has extinguished. Failure to do so, the other party wins the case.

[25] Among elements of evidence produced by PHOENIX OF RWANDA INSURANCE COMPANY Ltd with intention of proving that it issued an insurance policy to TRANSCORP on credit though it did not pay some of the premium policy, there is also an insurance agreement dated 08/04/2015 to cover its 61 vehicles for 96.469.772Frw, that TRANSCORP admits some of the vignettes to have been given by PHOENIX OF RWANDA INSURANCE COMPANY Ltd and a document titled Statement of Unpaid Premiums/ After Renewal in 2016 signed respectively by both parties on 28/11/2016 for PHOENIX OF RWANDA INSURANCE COMPANY Ltd and 02/12/2016 for TRANSCORP, whereby both parties agreed that the debt of insurance that TRANSCORP owes PHOENIX OF RWANDA INSURANCE COMPANY Ltd worth 53,915,427Frw and bank statement of PHOENIX OF RWANDA INSURANCE COMPANY Ltd which proves that TRANSCORP was paying progressively.

[26] For TRANSCORP, it does not produce any proof that after signing that document titled Statement of Unpaid Premiums/ After Renewal in 2016 mentioned above, that it paid the debt it admits.

[27] The Court finds, TRANSCORP's statement that there is no loan agreement concluded between it and PHOENIX OF RWANDA INSURANCE COMPANY Ltd, that rather, the insurance agreement was done on the debt, this cannot be helpful to it because it admits itself to have received vignettes from PHOENIX OF RWANDA INSURANCE COMPANY Ltd and there are some elements of evidence which prove that there is a debt which it failed to pay, this is sufficient to hold it liable for the remained payment.

[28] The Court also finds TRANSCORP's statement that the fact of receiving vignettes should be presumed that it paid, this should not be considered too, because a document titled statement of unpaid premiums After Renewal in 2016 is proof that vignettes were issued before the full premium is paid because of good practice of both parties, thus those vignettes are not proofs of payment, but those are proofs issued to those who are given vehicle insurance, the one who has issued them shall be responsible when an accident occurs regardless whether he/she was paid or not.

[29] The Court also finds, TRANSCORP's defense stating that a document named Statement of Unpaid Premiums/ After Renewal in 2016 was signed by a person who was not representing TRANSCORP because clause 12 of its statute stipulates those who are signatories who represent it, this should not be considered since TRANSCORP does not deny insurance agreement with PHOENIX OF RWANDA INSURANCE COMPANY Ltd which bears the same signature with that of the document titled Statement of Unpaid Premiums/ After Renewal in 2016, should not invoke that the one who signed that document was not competent to do so because it would be a contradiction.

[30] In light of the laws as well as motivation mentioned above, the Court finds, there are elements of evidence to prove that TRANSCORP owes to PHOENIX OF RWANDA INSURANCE COMPANY Ltd a debt based on insurance of their cars, thus, it has to pay.

3. To identify the amount of the debt which TRANSCORP owes to PHOENIX OF RWANDA INSURANCE COMPANY LTD and damages requested.

[31] In his submissions, Counsel Buhuru Pierre Celestin explains that the debt claimed by PHOENIX OF RWANDA INSURANCE COMPANY Ltd, he prays to the Court to order TRANSCORP for payment of 83.739.236Frw, and related interests calculated on 21% from 03/03/2017, the day for which PHOENIX OF RWANDA INSURANCE COMPANY Ltd warned TRANSCORP for the last time until payment, all totaling to 17.585.239 Frw x 2yeaars = 35.170.497 Frw, procedural fees and counsel fees amounting to 5.000.000Frw.

[32] Council for TRANSCORP does not respond on the amount claimed, they state that it has no debt for PHOENIX OF RWANDA INSURANCE COMPANY Ltd, because it would not have been given vignettes without payment.

DETERMINATION OF THE COURT

[33] The court finds, considering Statement of Unpaid Premiums/ After Renewal in 2016” of 53.913.427Frw which was not paid in 2016, a document prepared by PHOENIX OF RWANDA INSURANCE COMPANY Ltd and signed by TRANSCORP on 02/12/2016, also in that document, both parties agreed on how that amount will be paid, TRANSCORP has to pay since it admits that document, the Court finds, that this document (Statement of Unpaid Premiums/ After Renewal in 2016) has the value of private deed because PHOENIX OF RWANDA INSURANCE COMPANY Ltd proved the remained amount of premium and TRANSCORP had agreed and signed⁴.

[34] With regard to the amount of 29.823.809,03Frw indicated in a document titled "statement of unpaid premiums" prepared by Revenue Accountant of PHOENIX OF RWANDA INSURANCE COMPANY Ltd on 07/03/2016, the Court finds that It should not consider that document in ordering TRANSCORP to pay that amount because it was prepared by PHOENIX OF RWANDA INSURANCE COMPANY Ltd itself, the fact that the document was prepared by one party, it should not serve as evidence since there are no other corroborating elements of evidence to prove if that amount was arrears of premium which were not paid by TRANSCORP in 2014-2015, the latter was not even notified so that it may react as it was done for the premium of 2016 as demonstrated above, therefore, TRANSCORP has to pay PHOENIX OF RWANDA INSURANCE COMPANY Ltd premium equivalent to 53.913.427Frw because that amount was solely proven.

[35] Concerning the interests calculated on 21% of the money which TRANSCORP owes to PHOENIX OF RWANDA INSURANCE COMPANY Ltd, their advocates state that those

⁴ Article 14 of the Law N°15/2004 of 12/06/2004 relating to evidence and its production provides that A private deed is a text, which bears a signature or a thumbprint of one or several of the parties. Only the parties to the deed are bound by the agreements within.

interests be added on the amount to be paid, the Court finds, in light of article 144 of the Law N^o 45/2011 of 25/11/2011 governing contracts⁵, it is right that TRANSCORP pays PHOENIX OF RWANDA INSURANCE COMPANY Ltd interests from the amount worth 53.913.427Frw since TRANSCORP failed to pay in due time and in conditions it agreed if not, it would make a loss to the insurer because PHOENIX INSURANCE COMPANY Ltd is an insurance company and it would have used that money in its insurance business or it would have got interests from saving of that money in a bank.

[36] The Court finds, in calculating those interests, the rate of 21% per year should not be considered, the rate claimed by PHOENIX INSURANCE COMPANY Ltd, because it is excessive, it also exceeds the rate of some of the banks in the country while it does not carry out the business of money such as banks, rather, deposit rate of 8.478% which is considered by the National Bank of Rwanda should be taken into account until the pronouncement of the case, that rate was also the one considered in the judgment RCOMAA 0032/15/CS rendered by the Supreme Court on 22/09/2017, between RAHA TRADING Ltd and BAKHRESA GRAIN MILLING RWANDA Ltd (BGM).

[37] The Court finds the interests should be computed from 03/03/2017, the day for which PHOENIX OF RWANDA INSURANCE COMPANY Ltd warned (final notice) TRANSCORP as stated by legal scholars that being warned implies that the creditor who was not paid on due time, shall be given damages or interests for the delay and that the debtor shall not be compelled to pay interests for the delay except when he/she has been notified⁶, up to 19/07/2019, the day of the pronouncement which are 855 days, therefore TRANSCORP has to pay PHOENIX RWANDA INSURANCE COMPANY Ltd, interests for the delay worth $53.913.427 \times 8.474 \times \text{days}$ $855/360 \times 100 = 10.850.482$ Frw, that is to say, that the debt and its interests worth 53.913.427 Frw + 10.850.482 Frw, all totaling to 64.763.908 Frw.

B. Cross appeal

Whether TRANSCORP has to be awarded damages

[38] TRANSCORP states that it is still being dragged into an unnecessary lawsuit, thus it claims damages equivalent to 2.000.000Frw for procedural fees and counsel fees.

[39] PHOENIX OF RWANDA INSURANCE COMPANY Ltd responds that these damages are baseless because TRANSCORP does not produce proofs for payment of the debt.

DETERMINATION OF THE COURT

⁵ If the breach of the contract consists of a failure to pay a sum of money or to render performance with fixed or ascertainable monetary value, interests are calculated from the time for performance was due to less all deductions to which the party in breach is entitled.

⁶ *La mise en demeure permet au créancier d'obtenir des dommages-intérêts ou des intérêts de retard (.....). En principe, le débiteur n'est tenu de dommages - intérêts moratoires, c'est-à-dire ceux qui réparent le retard, que s'il a été mis en demeure, le seul fait que le débiteur n'ait pas payé à l'échéance ne cause pas au créancier un préjudice tenant au retard, (Ph. Malaurie, L. Aynes et Ph. Stoffel-Munck, Droit des obligations, 7e Edition, Paris, CUJAS, pp.529-530.*

[40] Article 111 Law No 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides that the claim for representation fees is an incidental claim to the principal claim aiming to repay expenses incurred during judicial proceedings. The claim for legal costs is adjudicated at the same time as the principal claim. It can also be admitted and adjudicated even if the principal claim has not been admitted.

[41] The Court finds, TRANSCORP should not be given procedural and counsel fees because it failed to honour an agreement it concluded with PHOENIX OF RWANDA INSURANCE COMPANY Ltd, it should not be given damages it claims since it is the one with liabilities.

[42] The Court finds TRANSCORP should give PHOENIX OF RWANDA INSURANCE COMPANY Ltd, procedural and counsel fees because it incurred expenses for following up the case and hiring a lawyer, but because what it claims are excessive, TRANSCORP should give it 700.000Frw for counsel fees, 300.000Frw for procedural fees on this instance, as well as 50.000Frw of the court fees paid the moment of lodging the appeal.

III. DECISION OF THE COURT

[43] Finds PHOENIX OF RWANDA INSURANCE COMPANY Ltd's appeal with merit;

[44] The rulings of the judgment RCOMA 00450/2018/HCC rendered by the Commercial High Court on 20/09/2018, are quashed ;

[45] Orders TRANSCORP to pay PHOENIX OF RWANDA INSURANCE COMPANY Ltd 64.763.908Frw for the debt and related interests;

[46] Orders TRANSCORP to give PHOENIX OF RWANDA INSURANCE COMPANY Ltd 700.000Frw for counsel fees and 300.000Frw for procedural fees on this instance, as well as 50.000Frw of the court fees, paid when filing the appeal.