

N.A (on behalf of his child I.A) v KIBUNGO MEDICAL CENTER

[Rwanda COURT OF APPEAL – RCAA 0008/2020/CA (Nyirandabaruta P.J, Kamere and Mukanyundo J) 25 June 2021

Civil law – Damages – Determination of tort related damages – Tort liability – Medical malpractice liability – Modalities of computation of damages resulting from the torts of medical practitioners on duty – The damages against a medical practitioner whose tort causes the loss of some parts of the patient’s body are determined in the court’s own discretion (ex aequo et bono).

Civil procedure – Damages – Determination of damages – When a court determines damages basing on a law that is irrelevant to the subject matter in a case, such damages shall be considered as if they were based on a non-existing law.

Civil procedure –Appeal–The determination of damages for tort liability – The appellate court cannot overrule the appealed judgement without indicating its defects.

Facts: The case started from the Intermediate Court of Ngoma, N.A on behalf of his child I.A, sued Kibungo Medical Center (KMC) seeking the damages on behalf of his child I.A whose the sexual organ was cut off by the employee of Kibungo Medical Center due to recklessness and carelessness, while being circumcised. Prime Insurance Company Plc, as KMC Insurer, intervened in the case.

The Court held that the claim filed by N.A on behalf of I.A has merits in part and KMC shall pay the compensation to N.A on behalf of his child I.A because its employee has damaged his body organ.

Kibungo Medical Center was not satisfied with the above ruling, and appealed it before the High Court, Chamber of Rwamagana, arguing that the Intermediate Court had ordered to Kibungo Medical Center to pay the ungrounded damages, it never considered that it paid an amount of money for the child’s medical treatment and it did not thoroughly analyse the liability-related laws in case the defendant is insured.

The High Court, Chamber of Rwamagana, held that the appeal filed by KMC has merits in part, the appealed judgment was reversed solely on the issue pertaining to the sum of damages granted to N.A on behalf of his child I.A and the Court decreased them.

N.A on behalf of his child I.A was not satisfied with the above ruling and appealed it before the Court of Appeal submitting that the High Court rendered the judgment basing on the non-existing law.

Kibungo Medical Center legal counsel argue that the damages were computed in accordance with the law, the Court has to determine whether the damages should be awarded in the Court’s own discretion or with reference to the doctrines or in accordance with laws.

The Court upheld that the computation of damages awarded to N.A on behalf of his child I.A should be determined on basis of the fact that Kibungo Medical Center admits that its employee committed a tort and they should be determined in the Court’s own discretion (ex aequo et bono), because there is so far no law relating to the modalities and the rate for damages computation.

Held :1. The damages related to the liability of a medical practitioner whose tort causes the loss of some parts of the patient's body are determined and computed in the court's own discretion (ex aequo et bono).

2. When a court determines damages based on a law that is irrelevant to the subject matter in a case, such damages shall be considered as if they were based on a non-existing law.

3. The appellate court cannot overrule the appealed judgment without indicating its defects.

Appeal has merit.

Statutes and statutory instruments referred to:

Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure, articles 9 and 111

Cases referred to:

Case N° RCAA 00073/2018/CA rendered by the Court of Appeal on 19/07/2019 opposing Nyirabatesi Laurence to King Faisal Hospital

Case N° RADA 0054/12/CS rendered by the Supreme Court on 19/12/2014 opposing Kabayijuka Gaspard to MINISANTE.

Authors cited:

Bernard Dubuisson et Noel Simar (sous la direction de), "Responsabilité, Indemnisation et recours", Volume 174, Juin 2017, page 149;

Henri De Page, Traité élémentaire de droit civil Belge, tome deuxième, Les incapables-Les obligations, Bruylant, Bruxelles, 1964, P. 1070.

Judgment

BACKGROUND OF THE CASE

[1] This case started from the Intermediate Court of Ngoma, N.A on behalf of his child I.A sued Kibungo Medical Center seeking damages amounting to 45,000,000 Frw for his child I.A whose the sexual organ was cut off while being circumcised, causing to him the invalidity. Prime Insurance Company Plc, as Kibungo Medical Center's insurer, intervened in this case.

[2] N.A on behalf of his child I.A, submitted that on 14/04/2017, a medical employee of Kibungo Medical Center, while circumcising his child, cut off the part of the glans of the child's sexual organ because of recklessness and carelessness, the child agitated himself due to fear, the part of glans of his sexual organ was cut off; Kibungo Medical Center rushed the child to King Faisal Hospital which tried to suture the part but in vain; he got sick in the same Hospital until the whole glans was cut off, because when the Hospital tried to suture the part which was cut off, the whole glans got rotten so that the Hospital decided to ablate the damaged part in a bid to protect the remaining part of organ of the child. Due to the fact that the child experienced the permanent invalidity at the level of 50% as asserted by the medical doctor, Kibungo Medical Center is liable for damages.

[3] The Intermediate Court of Ngoma rendered the judgment RC 00222/2017/TGI/Ngoma on 31/07/2018 and held that the claim filed by N.A on behalf of his child I.A has merits in part and Kibungo Medical Center shall pay the damages amounting to 35,000,000 Frw because its employee has damaged the child's sexual organ, in addition to 500,000 Frw for the counsel fee and 50,000 Frw for the court fee.

[4] Kibungo Medical Center was not satisfied with the ruling, it appealed it before the High Court, Chamber of Rwamagana, arguing that the Intermediate Court of Ngoma charged it with the damages amounting to 35,000,000 Frw without any related reference ; it disregarded 2,900,000 Frw paid for the child's medical treatment, and it did not thoroughly analyse the liability-related laws in case the defendant is insured.

[5] On 30/07/2019, High Court, Chamber of Rwamagana, rendered the judgment RCA 00065/2018/HC/RWG, and held that the appeal filed by Kibungo Medical Center has merits in part, and the appealed judgment was solely reversed on the issue pertaining to the amount of the damages awarded to N.A on behalf of his child I.A, it fixed the damages to 8,640,000 Frw instead of 35,000,000 Frw, it sustained the lawyer and court fees. The Court has as well held that 2,993,000 Frw that Kibungo Medical Center paid for the child's medical treatment should not be deducted from the awarded damages, since Kibungo Medical Center paid the above sum to settle the issue it caused; 30,000 Frw paid for judicial expertise should not be deducted as it requested it for its own interest, it held that that out of 8,640,000 Frw determined as damages, Kibungo Medical Center will pay a sum of 6,640,000 Frw to N.A on behalf of his child I.A, Prime Insurance Company shall pay 2,000,000 Frw, as per their insurance contract N° 413/00021583-SG Police of 24/06/2016 so provides; Kibungo Medical Center will again pay to him 650,000 Frw for counsel fee and procedural fee at the appeal instance.

[6] N.A on behalf of his child I.A was not satisfied with the ruling of the case, and he appealed it before the Court of Appeal, arguing that the High Court, Chamber of Rwamagana, rendered the judgment on basis of non-existent law and disregarded the law into force on which relied the Intermediate Court of Ngoma in its ruling, and it coined its own law that is irrelevant with the criminal act committed against I.A, in the paragraph 16 of the judgment RCA 00065/2018/HC/RWG, the High Court referred to a non-existent law to hold that the fact was an accident without any supporting evidence, and it held that Kibungo Medical Center paid 30,000 Frw for the judicial expertise while it is not true.

[7] The hearing in public was fixed on 21/12/2020, but on that date, the case was not heard since one of the judges of the bench was not present owing to illness, the hearing was adjourned on 26/01/2021, on that date, the case was again not heard as the whole City of Kigali was placed under lockdown in the context of preventing the spread of Covid – 19 , the hearing was postponed 02/06/2021, on that date, the case was heard in public and all the litigants were present, N.A on behalf of his child I.A was represented by Counsel Rwenga Etienne together with Counsel Gashugi Heron, while Kibungo Medical Center was represented by Dr. Kanimba Pierre Célestin assisted by Counsel Nkurunziza Chantal together with Counsel Ngerageze Bernard whereas Prime Insurance Company Plc was represented by Counsel Bagomora Charles, the pronouncement of the judgment was scheduled on 25/06/2021 on which it was pronounced.

II. ANALYSIS OF LEGAL ISSUES

Determining the legal basis for the damages awarded to N.A on behalf of his child I.A.

[8] Counsel Gashugi Heron, assisting N.A who pleads on behalf of I.A, argues that paragraphs 16 and 21 of the judgment RCA 00065/2018/RWG indicate that the High Court, Chamber of Rwamagana, based its ruling on a non-existing law, since the Court coined¹ a law irrelevant to the criminal act committed against I.A, while the Court had already found that the fact had serious and unbearable consequences.

[9] He further submits that the Court held that the fact that the sexual organ of I.A was cut off is an accident and it so ruled without any supporting evidence, so that it rendered the judgment on basis of the Presidential Order N^o 31/01 of 25/08/2003 establishing the modalities of payment of damages for bodily injuries resulting from accidents caused by automobiles, it compared the facts occurring in different contexts, involving different actors by their profession, whereby a vehicle accident might be caused by a number of varying factors that might include its mechanical conditions, the driver him/herself, the conditions of the road on which the vehicle is driven, and other external elements that might fall on the vehicle and passengers; such fact is far different from a scenario of a medical practitioner who received a healthy child and cut off his sexual organ. He further submits that the Court should base its ruling on its own discretion as per the provision of article 9 of the Law N^o 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure², the judgment RCAA 0073/2018/CA rendered by the Court of Appeal on 19/07/2019 opposing Nyirabatesi Laurence to King Faisal Hospital whereby the Court of Appeal determined the damages with reference to article 260 of the Law of 30/07/1888 instituting the preliminary title of Civil Code Book III³ and to doctrines.

[10] He concluded by praying the Court to order to Kibungo Medical Center to pay the damages of 45,000,000 Frw as it had earlier been decided by the Intermediate Court of Ngoma, as they are not excessive in comparison to the invalidity that the child has sustained, as it is evidenced by the medical expertise, the photographs that illustrate how the child's sexual organ was cut off and the article 260 of the Law of 30/07/1888 instituting the Preliminary Title of the Civil Code Book III into force when the judgment n^o RCA 00065/2018/HC/RWG was rendered because the Law N^o 020/2019 of 22/08/2019 repealing all the laws enacted before the Independence was published in the Official Gazette N^o 37 of 23/09/2019.

[11] Counsel Rwenga Etienne assisting N.A who pleads on behalf of his child I.A adds that the judge should not have based his ruling on legal provisions which are irrelevant to the subject-matter because by the time when his child's sexual organ was cut off and the judgment rendered

¹ Anyone whose sexual organ is chopped off by a medical practitioner shall be considered as a person who got injured in the road accident and the related damages shall be doubled.

² A judge adjudicates a case on the basis of relevant rules of law. In the absence of such rules, the judge adjudicates according to the rules that he/she would establish if he/she had to act as legislator, relying on precedents, customs, general principles of law and doctrine.

³ Tort liability is not always direct and personal, it can as well be indirect, as it can be brought about by subjects or objects that are under ones' responsibility; a father or a mother takes up the liability for torts committed by their children with whom they live in the same house. Employers are responsible for torts committed by their employees on duty; teachers and vocational trainers are liable for torts committed by their students and trainees under their authority...

by the Intermediate Court of Ngoma, the article 260 of the Law of 30/07/1888 instituting the Preliminary Title of the Civil Code Book III applied, or he should refer to other courts' decisions such as the judgment RCAA 00073/2018/CA abovementioned, the doctrines⁴ or customs as it is well known that in Rwandan custom, the person who causes prejudice to another is liable to pay damages to him/her; therefore, Kibungo Medical Center is liable to pay all damages as they have been claimed, because the invalidity caused to the child makes him to feel rejected by others, he cannot marry, he has no need for sexual intercourse and he cannot have it, since his sexual organ was cut off; he is feeling shame towards his fellow classmates who laugh at him when he urinates seated; they wonder themselves about his future when he will be enough mature to marry, the girl who will accept to marry him while his sexual organ is cut off.

[12] Dr. Kanimba Pierre Célestin, as Managing Director of Kibungo Medical Center, argues that the issue should be examined on basis of the laws for determining the modalities of the computation of the damages to be awarded to I.A. He further states that the judge has decided in contradiction with the Presidential Order n° 31/01/ of 25/08/2003 establishing the modalities of payment of damages for bodily injuries resulting from accidents caused by automobiles whereby, for example, in the paragraph 21 of the judgement, he stated that “ *However, the Court finds that, due to the fact that a medical practitioner has heavier responsibility on the life of patients than the driver of the automobile on the road, it is necessary that the figures provided by the Presidential Order were taken into consideration, the determined damages were doubled for medical tort liability*”, the Court of Appeal has to examine the issue related to the damages granted on basis of the above mentioned Presidential Order N° 31/01 of 25/08/2003, the judge doubled them while it was not the case. He requests the Court of Appeal to rectify the defects as the decision was based on the law misapplied, Kibungo Medical Center accepts to pay damages which are not doubled and paid by the Insurer, and it has to pay the balance.

[13] Counsel Mukaruzagiriza Chantal assisting Dr Kanimba Pierre Célestin, the representative of Kibungo Medical Center, submits that the High Court, Chamber of Rwamagana, has not based its ruling on the non-existing law as it rendered the judgment on basis of the case RADA 0054/12/CS decided by the Supreme Court on 19/12/2014 opposing the Ministry of Health to Kabayijuka Gaspard who was injured by a so-called nurse while the latter was attendant at Nyarubuye, he damaged his vein, he sustained permanent incapacity, the judgment was rendered on basis of the Presidential Order N° 31/01 of 25/08/2003 establishing the modalities of payment of damages for bodily injuries resulting from accidents caused by automobiles, they could not impose to the judge the reference for the case adjudication.

[14] She also adds that the article 260 of a Law of 30/07/1888 establishing the Preliminary Title of the Civil Code Book III on which rely the appellants to state that it should serve as reference for the adjudication of the case, does not provide for the modalities of the damages computation and the Court is not required to award all damages claimed by a party, it determines them in its own discretion. She concludes by submitting that they note that the damages were determined in accordance with the law, the Court has to examine whether the damages estimated in accordance

⁴ Bernard Dubuisson et Noel Simar (sous la direction de), « Responsabilité, Indemnisation et Recours » Volume 174, Juin 2017, page 149), they wrote about « réparation des préjudices subis » arguing that on any issue filed to a judge, depending on the fact, the specific evidence, he/she awards an inclusive amount, he/she details the child's incapacity, he/she questions about the category of incapacity in consideration of the categories of awarding damages which are not doubled and should be paid by the insurer and it has to pay the balance.,

with the doctrines or laws should be granted; she cannot retort about other issues related to the child's shame, the category of the incapacity in which he classifies himself.

[15] Counsel Ngerageze Bernard who also assists Dr Kanimba Pierre Célestin in this case, submits that he does not question the case ruling, the fact that the judge based the ruling on the article 9 of the Law N^o 22/2018 of the 29/04/2018 relating to the civil, commercial, labour and administrative procedure for determination of the damages without setting aside the legal provisions; the appellants do not indicate the rectification modalities, apart from merely citing the article 260 of the Law of 30/07/1888 establishing the Preliminary Title of the Civil Code Book III which cannot be currently applied as it has been repealed. He further avers that, before the High Court, all the parties have agreed that what occurred was accident; the reason why the determination of the damages was based on the Presidential Order N^o 31/01 of the 25/08/2003 establishing the modalities of payment of damages for bodily injuries resulting from accidents caused by automobiles.

[16] With regard to the doctrines which should serve for the damages determination as alleged by the appellants, he argues that the textbooks published in foreign countries cannot replace the aforementioned Presidential Order, though it provides for the bodily injuries caused by the road-related accidents; it should be taken into consideration as it applies in our country.

[17] With regard to the fact that the judge ruled that a person whose the sexual organ is cut off by a medical practitioner, shall be considered as the victim of the road-related accident and the damages for the victim of the road-related accident are doubled, he states that Kibungo Medical Center notes that such is misinterpretation as the appealed judgment was not published in the Law Reports by the Supreme Court for setting a position for similar claims filed to the courts, therefore, such statement is unfounded.

[18] Counsel Bagomora Charles representing Prime Insurance Company Plc submits that, while litigating before the High Court, Chamber of Rwamagana, the article 260 of the Law of 30/07/1888 establishing the Preliminary Title of the Civil Code Book III was repealed, they debated about that issue, and the Court had no any reference, except borrowing from other source or learning from other countries' practices. He requests the Court of Appeal to examine the date on which the law was repealed and the appealed judgement rendered, the Court referred to the article 9 of the Law N^o 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure in a bid to settle the issue because that article had already been repealed.

[19] With regard to the reparation mode and the evaluation method detailed by the doctrines, he states that those issues had been examined, the Court required to the child's representatives to specify the reparation related to the prejudice for which they filed the claim, they failed to explain it, the Court therefore referred its ruling on the Presidential Order N^o 31/01 of the 25/08/2003 establishing the modalities of payment of damages for bodily injuries resulting from accidents caused by automobiles as it clearly provided for the issues similar to the claim filed to it.

DETERMINATION OF THE COURT

[20] Article 9 of the Law N^o 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides that: "A judge adjudicates a case on the basis of relevant

rules of law. In the absence of such rules, the judge adjudicates according to the rules that he/she would establish if he/she had to act as legislator, relying on precedents, customs, general principles of law and doctrine.”

[21] In the appealed judgment N° RCA 00065/2018/HC/RWG, especially in its paragraphs 22 and 23, the High Court, Chamber of Rwamagana, awarded the damages to N.A on behalf of his child I.A with reference to the Presidential Order N° 31/01 of the 25/08/2003 establishing the modalities of payment of damages for bodily injuries resulting from accidents caused by automobiles and it doubled them due to the fact that a medical practitioner has heavier responsibility on the life of patients than the driver of the automobile on the road.

[22] For this case, the claimed damages result from the tort committed in the medical facility for which I.A lost part of his sexual organ while being circumcised, their computation should be based on the rate fixed for the accidents like those which occur in the medical facility if any and the lack of such rate cannot be a reason for referring to the Presidential order N° 31/01 of 25/08/2003 abovementioned as it does not have the same nature with the subject-matter of this case while the article 9 of the above mentioned Law N° 22/2018 of 29/04/2018 provides that “ In the absence of such rules, the judge adjudicates according to the rules that he/she would establish if he/she had to act as legislator, relying on precedents, customs, general principles of law and doctrine”.

[23] The Court finds that both parties concur that in Rwanda, there is so far no rate for determination and computation of damages based on the liability of a medical practitioner whose torts result into the loss of some parts of the patient’s body; the litigants disagree on this issue so that the High Court, Chamber of Rwamagana, calculated the damages because N.A states that it should not have based the computation of damages to the rate fixed by the above mentioned Presidential Order N° 31/01 of 25/08/2003, while the litigation was not related to the road-related accident; instead, they should be determined in the court’s own discretion as per the article 9 of the above mentioned Law N° 22/2018 of the 29/04/2018; whereas Kibungo Medical Center and Dr Kanimba Pierre Célestin, its representative, submit that the damages should be based on the rate provided under the aforementioned Presidential Order as held by the High Court in the appealed judgment as there is no specified rate applied to the liability for the medical torts.

[24] The Court finds that, though there is no rate applied to calculate the damages for torts committed by a medical practitioner when treating a patient, those damages should not be computed in reference to the abovementioned Presidential Order N° 31/01 of the 25/08/2003, since the provisions of the Presidential Order has not the same nature with the subject-matter of the case. Instead, the Court finds that, as above indicated, the damages should be determined in the court’s discretion on basis of parties ‘submissions, including the fact that the child who suffered injuries for which the damages are claimed will always endure them during his life, as upheld by this Court of Appeal in the judgment N° RCAA 00073/2018/CA rendered on 19/07/2019 opposing Nyirabatesi Laurence to King Faisal Hospital in which the subject-matter was the determination of compensation for moral loss for injuries caused by King Faisal Hospital to Nyirabatesi Laurence⁵ when she was being treated in that Hospital.

⁵ See paragraph 37 of judgment n0 RCAA 00073/2018/CA rendered by the Court of Appeal on 19/07/2019 opposing Nyirabatesi Laurence against King Faisal Hospital.

[25] The Court finds that, since both litigating parties agree on the committed tort following which I.A lost a part of his body and causing to him the incapacity, the remaining issue is the determination of damages that should be awarded to the victim on basis of the tort gravity and its effects on the victim and in consideration of the period during which the child will endure the injuries caused to him, they should be computed in the judge's discretion (ex aequo et bono)⁶, because there is no law establishing the damages computation modalities; they should be charged to Kibungo Medical Center, represented by Dr Kanimba Pierre Célestin, as the employer of the medical practitioner who committed the tort for which the compensation is sought. Such is the position set by the Supreme Court and the Court of Appeal in different judgments for which the subject-matter was the damages resulting from torts committed by medical practitioners and which caused the incapacity to patients; for example, the judgment N° RDA 0054/12/CS rendered by the Supreme Court on 19/12/2014 opposing the Ministry of Health to Kabayijuka Gaspard who came for medical treatment and had been injected in the vein by the employee of the Hospital, the injection caused to him the invalidity and the judgment RCAA 00073/2018/CA rendered by the Court of Appeal on 19/07/2019 opposing King Faisal Hospital to Nyirabatesi Laurence who went to the Hospital for delivering and by the time of operating her, her urinary bladder was damaged so that she got fistula.

[26] Basing on all the above provided elucidations, the Court finds that the determination of damages awarded to N.A on behalf of I.A should be determined on basis of the fact that Kibungo Medical Center admits that there is a tort committed by its employee and the judge's discretion (ex aequo et bono), because there is no law providing for the modalities and the rate applied to the damages determination.

b. The amount of the claimed damages

[27] Counsel Rwenga Etienne representing N.A pleading on behalf of his child I.A requests the Court to hold the damages amounting to 45,000,000 Frw as claimed before the Intermediate Court of Ngoma because the employee of Kibungo Medical Center cut off the sexual organ of his child I.A, causing to him serious and permanent incapacity at the level of 50%.

[28] Dr Kanimba Pierre Célestin representing Kibungo Medical Center together with his legal counsel state that the damages amounting to 45,000,000 Frw are excessive, they are not justified, Kibungo Medical Center subscribed for insurance in Prime Insurance Company Plc as regards the compensation. They request the Court of Appeal that in computing the damages, it shall deduct 2,993,000 Frw paid by Kibungo Medical Center for the child's medical treatment, and 30,000 Frw paid for the medical expertise.

⁶ L'évaluation du dommage ex aequo et bono ne peut être adoptée par le juge comme mode d'évaluation que si, d'une part, il donne la raison pour laquelle une autre base d'évaluation, proposée par une des parties, ne peut être admise en l'espèce, et si, d'autre part, l'évaluation ne peut, à défaut d'éléments plus sûrs, se faire qu'ex aequo et bono'', in Henri De Page, Traité élémentaire de droit civil Belge, tome deuxième, Les incapables-Les obligations Bruylant, Bruxelles, 1964, P. 1070.

[29] Counsel Bagomora Charles representing Prime Insurance Company Plc submits that the insurance for which Kibungo Medical Center subscribed in Prime Insurance Company Plc is limited to 2,000,000 Frw as per the insurance contract concluded by both parties.

DETERMINATION OF THE COURT

[30] Article 9 of the Law N° 22/2018 of the 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides that “A judge adjudicates a case on the basis of relevant rules of law. In the absence of such rules, the judge adjudicates according to the rules that he/she would establish if he/she had to act as legislator, relying on precedents, customs, general principles of law and doctrine.”

[31] The case file contains a medical expertise issued by Kanombe Military Hospital on 31/05/2019 indicating that the victim sustained the permanent incapacity at the level of 50%.

[32] The case file also contains the insurance contract N° 413/00021583-SG of 06/24/2016 entitled “Medical Malpractice Policy Clinic La Médicale concluded between the appellant and Prime Insurance Company Plc, whereby both contracting parties agreed that Prime Insurance Company Plc insures up to 2,000,000 Frw for damages that can be charged to Kibungo Medical Center in case of prejudice resulting from employee’s work-related accident.

[33] The Intermediate Court of Ngoma awarded the damages amounting to 35,000,000 Frw determined in the Court’s own discretion since there was no law establishing the modalities of damages determination, they are determined on basis of the incapacity level of 50% and 57 years of the child remaining life expectancy while the High Court, Chamber of Rwamagana, fixed the damages to 8,640,000 Frw determined in the Court’s own discretion and the rate indicated in the Presidential Order N° 31/01 of 25/08/2003 establishing the modalities of payment of damages for bodily injuries resulting from accidents caused by automobiles.

[34] The High Court, Chamber of Rwamagana, found that, in the paragraph 35 of the appealed judgment, the amount of 2,993,000 Frw paid by Kibungo Medical Center for the child’s medical treatment should not be deducted from the damages determined by the Court since Kibungo Medical Center should be held liable for the consequences and settle the problem resulting from the tort committed for recklessness and lack of appropriate measures to prevent the tort committed, the amount of 30,000 Frw paid for medical expertise should not be reimbursed to Kibungo Medical Center which requested for it in its own interest as evidence in the case.

[35] The Court finds that both the lower courts found that there was no specific law establishing the rate to determine the damages for this issue; the Intermediate Court of Ngoma based its ruling on the Court’s own discretion, whereas the High Court, Chamber of Rwamagana referred to the Presidential Order N° 31/01 of 25/08/2003 which is irrelevant to the subject-matter of the case, it held that the damages should be doubled (paragraph 21) because a medical practitioner has heavier responsibility on the patients’ life than a driver on the road, there is no law that so provides. The High Court, Chamber of Rwanda, based on the non-existent law, as it referred to the Presidential Order N° 31/01 of 25/08/2003 which is irrelevant to the subject-matter, in addition, the determined damages were doubled while there is no underpinning legal provision in the Presidential Order on which it relied.

[36] The Court finds that referring to a non-existent law led to the decrease of the damages determined by the Intermediate Court of Ngoma so that N.A on behalf of his child I.A filed appeal because the awarded damages were based on the law irrelevant to the subject-matter, this Court finds that the damages determined by the Intermediate Court of Ngoma were fixed in accordance with the law because by decreasing them the High Court did not firstly point out the defects about the previous judge's discretion and it was not appropriate as it referred to the non-existent law since the applied law was irrelevant with the subject-matter, all damages should be maintained as determined in the Court's discretion at the first instance; however, Kibungo Medical Center, represented by Dr Kanimba Pierre Célestin, shall pay jointly with its insurer Prime Insurance Company Plc as agreed upon within the insurance contract N^o 413/00021583-SG Police concluded by both parties on 24/06/2016 and on the rate which does not exceed the range agreed upon by both parties within the insurance contract.

[37] With regard to the amount of 2,993,000 Frw paid by Kibungo Medical Center for the child's medical treatment and the latter requests that the amount should be deducted from the damages that it shall be ordered to pay, the Court finds that, as held by the High Court, such amount should not be deducted from the damages determined by the Court because Kibungo Medical Center should be held liable for the consequences of the issue caused by its employee, it should pay for the medical treatment of a child who was brought healthy by his parent, the employee cut off a part of the child's sexual organ causing to him the permanent incapacity at the level of 50% certified by the medical experts.

[38] With regard to the amount of 30,000 Frw paid by Kibungo Medical Center for the processing of the medical expertise, this Court finds that, as held by the High Court, Chamber of Rwamagana, the expertise was processed upon request of Kibungo Medical Center in order to challenge the incapacity level of 50% initially certified for the child I.A, it should not be refunded such amount as the expertise was processed in its interest.

c. Regarding the counsel and procedural fees claimed by the parties

[39] Counsel Rwenga Etienne and Counsel Gashugi Heron assisting N.A who pleads on behalf of his child I.A request the Court to order to Kibungo Medical Center represented by Dr Kanimba Pierre Célestin to refund to N.A the amount of 1,000,000 Frw for the counsel fee spent at this level of appeal, 300,000 Frw for the procedural fee and 140,000 Frw for the court fee deposited in the Intermediate Court of Ngoma and the High Court, Chamber of Rwamagana.

[40] Counsel Mukaruzagiriza Chantal and Counsel Ngerageze Bernard who assist Dr Kanimba Pierre Célestin, representing Kibungo Medical Center, request to the Court of Appeal to order to N.A on behalf of his child to refund to Kibungo Medical Center the amount of 2,000,000 Frw for the counsel fee including the amount paid in the High Court, Chamber of Rwamagana and the Court of Appeal.

DETERMINATION OF THE COURT

[41] Article 111 of the Law N^o 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure provides the following: *"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 with the principal claim. It can also be admitted and adjudicated even if the principal claim has not been admitted”.

[42] The Court finds that the counsel and procedural fees claimed by Kibungo Medical Center represented by Dr Kanimba Pierre Célestin are not grounded since it loses the case as above elucidated.

[43] The Court finds that the counsel, procedural and court fees claimed by N.A on behalf of his child I.A are grounded and he deserves them, but they are determined in the Court’s discretion as the claimed fees are excessive, therefore he is awarded 800,000 Frw for the counsel fee and 300,000 Frw for the procedural fee at all levels of this case proceedings.

III. DECISION OF THE COURT

[44] Holds that the appeal filed by N.A on behalf of his child I.A has merits;

[45] Decides that the judgment RCA 00065/2018/HC/RWG rendered by the High Court, Chamber of Rwamagana, on 30/07/2019 is entirely reversed;

[46] Orders to Kibungo Medical Center represented by Dr Kanimba Pierre Célestin to pay the amount of 35,000,000 Frw to N.A on behalf of his child I.A, whereby Prime Insurance Company shall pay 2,000,000 Frw as agreed upon within the insurance contract n° 413/00021583-SG of 24/06/2016;

[47] Orders to Kibungo Medical Center represented by Dr Kanimba Pierre Célestin to pay to N.A on behalf of his child I.A, 800,000 Frw for the counsel fee, and 300,000 Frw for the procedural fee at all levels.

[48] Orders to Kibungo Medical Center represented by Dr. Kanimba Pierre Célestin to refund to N.A on behalf of his child I.A the court fee he deposited in the Intermediate Court of Ngoma and the Court of Appeal.