

**EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd (ECU)
v. ROYAL HASKONING DHV(Pty) Ltd**

[Rwanda SUPREME COURT – RCOMA00007/2017/SC (Rugege, P.J., Cyanzayire and Mutashya, J.) December 07, 2018]

Contract law – contract – The typographical error is not a ground to render a contract null and void.

Arbitration – Arbitration clause – Arbitration award – An arbitration clause which forms the basic part of a commercial contract shall be treated as an agreement irrespective of the other terms of the basic contract – When the intent of the parties concerning the arbitration procedure is not respected is a ground for nullification of the arbitration award – Law N° 005/2008 of 14/02/2008 on arbitration and conciliation in commercial matters, article 9 and 31

Fact: ROYAL HASKONING DHV (Pty) Ltd concluded a sub consultancy contract with EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd to jointly do a part of the work which ROYAL HASKONING DHV (Pty)Ltd contracted with the Ministry of Infrastructure in Rwanda. They consented that in case of the disputes, there will be the intervention of arbitrator whom both parties will choose, he will be appointed in accordance to the South African Law and also the arbitration procedure will be consented on by both parties, they also agreed that failure to such agreement, the current *conduct of arbitration* published by Association of Arbitrators shall be applied.

Thereafter, the disputes raised because EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd was not paid as it was provided by the contract, it requested ROYAL HASKONING DHV (Pty)Ltd to appoint its arbitrator who will jointly work with its arbitrator but refused it. Therefore, EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd filed a claim to the Commercial Court requested for appointing an arbitrator to settle the dispute, then, that Court appointed an arbitrator.

ROYAL HASKONING DHV (Pty) Ltd applied third party opposition against that judgment, the Commercial Court rejected its claim because it was filed after the prescription of one month from the day it became aware the rulings of the judgment it applied the third party for. It filed again a claim to the Commercial High Court praying for case review, the court also found it without merit.

In arbitration, the bench found with merit the claim of Experts Consultants United INC, Uganda, Ltd because Royal Haskoning DHV (Pty) Ltd breached the contract, it ordered Royal Haskoning DHV (Pty) Ltd to pay the value of the contract which remained to be performed and the interest of four years, moral damages, transport fees, accommodation and arbitrator fees.

ROYAL HASKONING DHV (Pty) Ltd filed a claim to the Commercial High Court requesting for quashing the arbitration award because it was unlawful, the Court quashed the arbitration award on the ground that it was contrary to the contract concluded by both parties because the arbitrator was appointed by the Commercial Court and he applied the laws which were not those of the *association of arbitrators* while both parties did not agree on the ruling procedure, thus, the arbitration award should be quashed, it ordered EXPERTS CONSULTANTS UNITED INC,

Uganda, Ltd to give to ROYAL HASKONING DHV (Pty) Ltd damages which includes procedure and counsel fees.

EXPERTS CONSULTANTS UNITED INC, UGANDA appealed to the Supreme Court stating that the arbitration award should not be quashed because it was lawfully. ROYAL HASKONING DHV(Pty)Ltd raised an objection of lack of the jurisdiction of the Supreme Court but the court found it without merit.

Before the hearing on merit, ROYAL HASKONING DHV (Pty)Ltd raised another objection that even if there was no article when the appeal was filed which prevent to appeal against the ruling of Commercial High Court on arbitration award; but the fact that the law which prevents to appeal against that decision is promulgated and the case is continuing, the decision on the competence must be quashed because the procedural laws are immediately implemented. Whereas Experts Consultants United states that the law which Royal Haskoning DHV Ltd bases on, was promulgated after appealing was made, therefore, no reason could prevent the admission of the appeal, because the law which was into force did not prevent it. The court ruled that even if the procedural rules are applied immediately, what was done before are lawful and remains with its value.

Regarding with whether Arbitration Act of 1965 mentioned in the contract is that of South Africa, EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd states that both parties did not well explain and the fact that they did not agree on an arbitrator, the Rwandan law should be applied as both parties consented in clause 2.4 of the contract. It further explains that even if both parties did not mention the applicable law, it finds that there was an error on year, instead of writing 2008 because the law on arbitration and conciliation in commercial matters in Rwanda is promulgated in that year, they wrote 1965. It explains that it requested for conciliation but ROYAL HASKONING DHV (Pty)Ltd refused it, the rest was to apply Rwandan laws, the fact that they applied KIAC law is not contrary to the agreement of both parties since it is recognized arbitration institution in Rwanda.

ROYAL HASKONING DHV (Pty) Ltd defends in stating that what must be considered in this case is clause 2.4 related to language and hearing on merit and that of 9.1 provides for the procedure of arbitration, it states that the arguments of EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd that it is not the South African law that should be applied is not true, because the conduct of Association of Arbitrators should have been applied, as KIAC replied to them that it was not provided under the contract, apart from they renovate the contract and adding it, therefore, what was done are contrary to the agreement of both parties which was the ground of Commercial High Court to quash the arbitration award because it was unlawful.

Held:1. Even if the procedure laws are applied immediately, what was done before remains with its value.

2. An arbitration clause that forms the basic part of a commercial contract shall be treated as an agreement irrespective of the other terms of the basic contract.

3. The typographical error is not a ground to render a contract null and void. Thus, the fact that they did not write that the arbitration law of 1965 and association of arbitrators both provided in clause 9.1 of the contract are of South Africa does not remove the intent of the contract that the applicable law and procedure are those of South Africa.

4. When the intent of the parties concerning the arbitration procedure is not respected is a ground for nullification of the arbitration award Appeal has no merit

Quashes the arbitration award.

The deposited court fees are equivalent to expenses incurred in this case.

Statutes and statutory instruments referred to:

Law N° 45/2011 of 25/11/2011 governing contracts in Rwanda, article 64 and 66.

Law N° 005/2008 of 14/02/2008 on arbitration and conciliation in commercial matters, articles 9 and 31.

No case referred to.

Authors cited:

Larry A. DIMATTEO “International Business Law and the Legal Environment, A Transactional Approach.”

Judgment

I.BACKGROUND OF THE CASE

[1] SSI ENGINEERS AND ENVIRONMENT CONSULTANTS (Pty) which later became ROYAL HASKONING DHV (Pty) Ltd, on 12/10/2010 concluded a contract (sub consultancy) with EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd, UGANDA Ltd to jointly do a part of the work which ROYAL HASKONING DHV(Pty)Ltd had to do for the Ministry of Infrastructure in Rwanda.

[2] ROYAL HASKONING DHV (Pty) Ltd states that they agreed in that contract that in case of disputes they will be submitted to a single arbitrator who will be appointed according to the arbitration law of South Africa, and also the procedure will be consented by both parties, in case of failure to agree the applied laws will be those that were promulgated by the association of arbitrators which will be in force at the time of appointing the arbitrator.

[3] Thereafter, the disputes raised due to the fact EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd was not paid as it was provided by the contract, it requested ROYAL HASKONING DHV (Pty)Ltd to name its arbitrator who can its arbitrator but it refused it. EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd filed a claim to the Commercial Court requested for appointing an arbitrator to settle the dispute which it has with ROYAL HASKONING DHV(Pty)Ltd, the case was recorded on RCOM0610/15/TC/NYGE and it was rendered by the Court on 30/04/2015, whereby it appointed Me Rubasha Herbert as an arbitrator.

[4] ROYAL HASKONING DHV (Pty) Ltd applied third party opposition against that judgment and it was recorded N° RCOM0619/15/TC/NYGE, the Commercial Court rejected its claim because it filed after the prescription of one month from the day it was aware the rulings of the judgment it applied the third party for.

[5] ROYAL HASKONING DHV (Pty) Ltd appeal against those rulings to the commercial high court, it was recorded on N° RCOMA00122/2016/CHC/HCC, the Court rendered that judgment on 29/07/2016 and found without merit the appeal of ROYAL HASKONING DHV(Pty)Ltd, it ordered to pay 2,500,000 Frw to ECU Ltd of the Counsel and procedure fees.

[6] ROYAL HASKONING DHV(Pty) Ltd filed again a claim to the Commercial High Court praying for a case review of the judgment N° RCOMA00122/2016/CHC/HCC, the case was rendered on 03/11/2016, the Court held that the ground which ROYAL HASKONING DHV (Pty) Ltd relies on for applying for a case review none of them is similar to those provided by the law, therefore, it's claim is inadmissible, it ordered it to pay 600,000 Frw of the counsel and Procedure fees.

[7] The appointed arbitrator conducted the hearing in default of ROYAL HASKONING DHV (Pty) Ltd, he rendered the award on 16/09/2016 and found with merit the claim of EXPERTS CONSULTANTS UNITED INC, Uganda, Ltd because ROYAL HASKONING DHV (Pty) Ltd breached the contract, it ordered ROYAL HASKONING DHV (Pty) Ltd to pay to ECU Ltd 47,993USD of the value for the rest of the contract, interests of 34,556USD for four years, this implies that $\frac{47,993 \times 18}{100} = 8,639USD \times 4 = 34,556$, moral damages for transport and accommodation worth 18,400USD and to pay the arbitrator fees of 10,000 USD.

[8] ROYAL HASKONING DHV (Pty) Ltd filed a claim to the Commercial High Court requesting for quashing the arbitration award because it was unlawful, the Commercial High Court rendered a judgment on 29/09/2017, and quashed the arbitration award on the ground that it was contrary to the contract concluded by parties, it ordered EXPERTS CONSULTANTS UNITED INC, Uganda, Ltd to give to ROYAL HASKONING DHV (Pty) Ltd 650,000 Frw of damages which includes procedure and counsel fees.

[9] In ruling, the Court relied on the fact that the parties consented in their contract "Association Agreement Document" in clause 9, that in case of arbitration, there will be one arbitrator according to the South African law of 1965 as it was amended to date, and also the hearing of that arbitration will be conducted according to what both parties will be agreed, it will follow the procedure provided in law of arbitration. The parties agreed in the second part of that clause that the arbitrator who will be appointed must be agreed on by both parties.

[10] It motivated that basing on that clause of the contract which they agreed on, it found that there have been appointed one arbitrator who was consented on by both parties, and conducting that arbitration based on arbitration law in South Africa in 1965 as it was amended to date, follows the procedure which they agreed on, failure to do so, they will apply procedure law promulgated by the association of arbitrators, however, it was not done because the appointment of an arbitrator did not follow the South African law and the proceedings were did not follow the law of the association of arbitrators that was into force by that time as it was agreed on by parties in the contract.

[11] It further motivated that apart from an arbitrator who would have been appointed in accordance to the South African law, he had to settle the disputes basing on that arbitral proceedings law and disputes itself, therefore the fact that the arbitrator was appointed by the Commercial Court and applied the laws which are not that of arbitration association, in case both

parties did not agree on the proceedings, the award rendered should be quashed because it is contrary to contract concluded by the parties.

[12] EXPERTS CONSULTANTS UNITED INC, UGANDA on 28/10/2017, appealed to the Supreme Court stating that the arbitration award of 16/09/2016 should not be quashed because it was lawfully rendered.

[13] ROYAL HASKONING DHV(Pty)Ltd raised an objection of lack of jurisdiction of the Supreme Court stating that EXPERTS CONSULTANTS UNITED INC, UGANDA appealed as it is an ordinary judgment which is not the case, disregarding that the arbitration awards are not subject to appeal, and this is a position of the Supreme Court of Canada.

[14] On 08/06/2018, the Court found without merit that objection and proceeded with the hearing of the case on merit.

[15] The hearing in public resumed again on 06/11/2018, EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd represented by Counsel Munderere Léopold together with Counsel Mitsindo Tom while ROYAL HASKONING DHV (Pty) Ltd was represented by Counsel Bizimana Emmanuel.

[16] Before the hearing on merit, Counsel BIZIMANA Emmanuel bases on article 74, paragraph 3, of the Law N° 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure¹ and on article 82 of the Law N° 30/2018 of 02/06/2018 determining the jurisdiction of courts², states that seeing that the bench is changed, it can examine the decision taken on jurisdiction and changes it because it is unlawful according to articles mentioned above, thus if the bench finds that the appeal did not fall into the jurisdiction of the Supreme Court, it held that the appeal was inadmissible, and the decision on jurisdiction that was taken by the previous bench be quashed. He adds that the fact that there is a decision, it cannot prevent the other bench to examine it again.

[17] He continues arguing that there was no article which prevents appealing against the ruling of Commercial High Court on the arbitration award at the time of lodging this appeal, the one who is not satisfied with it he could file a claim against it but he was not allowed to appeal against its decision, thus, the fact that there is a law which explains it well and the case is still proceeding, the decision on the jurisdiction of the court should be quashed because the procedure laws take effect immediately after its promulgation.

[18] Munderere Léopold, the counsel for EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd states that the arguments of counsel Bizimana Emmanuel are groundless because there is no way the court can re-examine the decision it took. The court may examine the time of which the judgment was subjected to appeal if there was a law which prevents those kinds of the judgment to be appealed, that the law which counsel Bizimana Emmanuel mentions, concerns

¹, However, if a judge believes that there are acts performed in breach of the law, he/she may decide the reopening of the hearing or modify some acts after hearing parties and provide reasons therefor.

², The Commercial High Court also examines the legality of awards rendered by the arbitrators. Judgments rendered by the Commercial High Court on the actions mentioned in Paragraph 4 of this Article are not subject to appeal.

with the other judgments which can be appealed in this court but it does not concern the judgments which are appealed before its promulgation.

[19] Counsel Mitsindo Tom states that the law which Me Bizimana Emmanuel bases on was promulgated on 02/06/2018 while the judgment had already been appealed, therefore, there was no ground to reject the appeal because the law which was in force allowed it.

[20] The court deliberated on that objection and held that even if the procedure law takes effect immediately, the previous ruling remains valid because it was lawful; it ordered that hearing continues with the examination of grounds of appeal of EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd relates to whether the arbitration award of 16/09/2016 was lawful.

II. ANALYSIS OF THE LEGAL ISSUE

Whether the appointment of the arbitrator and award he made whether on the merit of the issue or in the procedure are in accordance to what the parties agreed in their contract (Association Agreement Document)

[21] Munderere Léopold, the counsel for EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd states that the rulings of the judge in paragraph 17 of the judgment RCOM 0005/2017/CHC/HCC that was rendered by the Commercial High Court the arbitrator settled the disputes without basing on the Law they agreed on, is baseless, because the contract which was concluded by both parties, it is not provided that the South African law shall be the one applied, this issue was examined by the Commercial Court of Nyarugenge and ruled that it is not indicated that the South African law is the one to be applied, it should also be noted that the judgment became binding, this is the reason why the arbitrator was appointed based on Law N° 005/2008 of 14/02/2008 on arbitration and conciliation in commercial matters in Rwanda.

[22] He states that in rendering the judgment, clause 2.4 and 9.1 of the contract concluded by both parties should be read together, because clause 2.4 paragraph 1 both parties agreed on language, whereas in paragraph 2, they agreed on applicable law which is the Rwandan Law, in clause 9.1, they agreed that the arbitration act of 1965 will be applied but they did not mention that it is that of South Africa. He adds that if the court interprets clause 9.1 which provides for arbitration, it will find that both parties agreed on the arbitrator and the law was the Arbitration act of 1965, but in case of failure to agree, the Rwandan law will be applicable.

[23] He adds that ROYAL HASKONING DHV (Pty) Ltd lost all cases related to the appointment of arbitrator, even if it is not clear that the mentioned arbitration act of 1965 is that of South Africa, it would have been applied if both parties had agreed on it, thus, an arbitrator based on the law of KIAC³ because both parties had not agreed on the Arbitration Act of 1965, rather they consented that in case of agreement of both parties the law of Association of Arbitration will be applicable.

[24] He states that none of those companies, have its headquarter in Rwanda, that is the reason why they agreed to apply Rwandan law, in case of disagreement on the Arbitration Act 1965.

³ KIGALI INTERNATIONAL ARBITRATION CENTRE

[25] Concerning with determining whether the arbitration act 1965 mentioned in the contract is that of South Africa, Counsel Munderere Léopold replied that he cannot comment on it because it can be that of South Africa or Uganda because both parties did not explain it well, and the fact that failed to agree on arbitrator, the Rwanda law was applicable as it was agreed on by both parties in clause 2,4 of the contract.

[26] Counsel Mitsindo Tom argues that even if both parties did not clearly state applicable law, he realizes that they erred on the year, instead of writing 2008 because the law on arbitration and conciliation in commercial matters is of that year, they wrote 1965. He states that EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd requested ROYAL HASKONING DHV (Pty)Ltd to appoint an arbitrator but it refused, so it had to apply the Rwandan Law, that the fact they applied the law of KIAC law, it not different from what both parties agreed on because it is an institution recognized in Rwanda that has arbitration in its attribution.

[27] Bizimana, the counsel for ROYAL HASKONING DHV (Pty) Ltd states what must be considered in this case is clause 2.4 and that of 9.1 of the contract which both parties concluded, that clause 2.4 is related to language and hearing of the case on merit, that of 9.1 provides for the procedure of arbitration, that the arguments of the counsel for EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd that it is not the South African law that should be applied is not true, what should be considered on that issue is the document they had especially the letter of 12/06/2014 which EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd wrote to KIAC and the latter replied that it is not provided, except if they amend their contract and incorporate it, this implies that they knew themselves that during the arbitration the South African law will be applied.

[28] He further states that the arguments of the counsel for EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd that in case of disagreement the law of KIAC will be applied, it is not true because Conduct of Association of Arbitrators was the one to be applied as it was stated by KIAC, therefore, what was done is in breach of the contract concluded by both parties, that was the reason why the Commercial High Court quashed the arbitration award since it was unlawfully.

COURT'S DETERMINATION

[29] Article 9 of the Law N° 005/2008 of 14/02/2008 on arbitration and conciliation in commercial matters provides that “arbitration agreement is an agreement by both parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement” whereas paragraph 2 of this article provides that “The arbitration agreement shall be in writing”.

[30] Article 31 of that law mentioned above provides that “the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings”.

[31] Article 64 of the Law 45/2011 of 25/11/2011 governing contracts provides that contracts made in accordance with the law shall be binding between parties and that contract shall be performed in good faith⁴

[32] Paragraph 1 of clause 2.4 of the contract which EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd, and ROYAL HASKONING DHV (Pty) Ltd concluded, they agreed that the language of the contract shall be English, paragraph 2 of that clause provides that the law which shall be applied in performing the contract is Rwandan law⁵.

[33] Clause 9.1 of that agreement, both parties agreed that the arbitration shall be performed by single arbitrator as it is provided by the arbitration law of 1965 which was into force at the time of concluding that contract, the proceedings shall be consented by the parties, failed to so, the conduct of arbitration shall be applied as it was published by Association of Arbitrators current at the date the arbitrator is appointed⁶.

[34] The Court finds that in interpreting the contract which both parties conclude, the purpose and promise under the contract should be considered as it is provided by article 66 of the Law N°45/2011 of 25/11/2011 governing contract in Rwanda⁷

[35] The court is finding that as article 9 of law N° 005/2008 of 14/02/2008 on arbitration and conciliation in commercial matters provides that the arbitration agreement may be the contract itself or the special addendum may be done for it; this implies that the arbitration agreement is special so that it can have value at the time of performing the contract even if it is determined to be invalid, the provision of this article is similar to the statement of the law scholar Larry A. DiMATTEO in his book “International Business Law and the Legal Environment, A Transactional Approach”, page 12 that the arbitration agreement independent⁸.

[36] Supreme Court bases on that article mentioned above and the explanations provided by the law scholar in arbitration, it concurs with the motivations provided by the Commercial High Court that the purpose of the parties in arbitration contract is a single arbitrator as it is provided in arbitration act of 1965⁹, the parties shall conclude about arbitration procedure, failure of such agreement, the current rule of Conduct of Association of Arbitrators shall be applied at the date the arbitrator is appointed¹⁰, the arbitrator must be accepted by the consultant and his sub-consultant.

⁴ Contracts made in accordance with the law shall be binding between parties. They may only be revoked at the consent of the parties or for reasons based on law. They shall be performed in good faith

⁵ The Language of the Agreement shall be the English language

The law which is to apply to this Agreement shall be the Laws of the Republic of Rwanda

⁶ Arbitration shall be by a single arbitrator in accordance with the provisions of Arbitration Act of 1965 as amended and shall be conducted in accordance with such procedure as may be agreed between the parties or, failing such agreement, in accordance with the rules for the conduct of Arbitrations published by the Association of Arbitrators current at the date the arbitrator is appointed

⁷ Interpret a contract or a clause thereof is to give the meaning of the purpose and promise under the contract

⁸ The Severability principle recognizes the arbitration clause in a contract as a separate agreement independent of the contract. Therefore, a law is needed to determine the validity of the arbitration clause. Also, if viewed as a separate agreement, then It can be enforced even if the underlying of a contract is determined to be invalid or unenforceable

⁹ Arbitration ACT 42 of 1965 as amended by Justice Laws Rationalisation Act 18 of 1996; General Law Amendment Act 49 of 1996 and Prevention and Combating of Corrupt Activities Act 12 of 2004, specifically in its provision 9 which provided that: « *Unless a contrary intention is expressed in the arbitration agreement, the reference shall be to a single arbitrator*»

¹⁰ The Association of Arbitrators (Southern Africa) Rules for the Conduct of Arbitrations 2013 edition standard procedure rules

[37] The Court finds further that the interpretation of clause 9.1 of the contract both parties concluded, it cannot be considered together with clause 2.4 of that contract as the counsel for EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd used in their pleadings, because as it was motivated above, the arbitration contract is independent, even if it is a part of contract in general, which means that in deciding on merit, clause 2.4 paragraph 2 of that contract concluded by both parties concerns with the applicable laws chosen by parties themselves in case of resolving the dispute in merit (Substantive Laws) will be based on, whereas, clause 9.1 of the contract concerns with the conduct and the procedure rules.

[38] The court finds, the fact that the parties did not include in their contract that Arbitration Act of 1965 and Association of Arbitrators mentioned in clause 9.1 are from South Africa, does not remove that the purpose of the contractors is to apply the South African law and the conduct of South Africa because SSI Engineers and Environment Consultants (Pty) Ltd which became ROYAL HASKONING DHV (Pty) Ltd offered a job, is South African company and these mentioned laws in contract are from South Africa, EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd failed to prove that these laws are Rwandan laws or elsewhere, while it is obvious that in Rwanda the applicable law for the arbitration matters is regulated by law N° 005/2008 of 14/02/2008 on arbitration and conciliation in commercial matters, whereas the organ which has arbitration in its attribution is KIIAC (Kigali International Arbitration Centre)

[39] Basing on article 64 of the Law N° 45/2011 of 25/11/2011 governing contracts in Rwanda mentioned above and on motivation provided in this case, the court is finding that arbitrator Me Rubasha Herbert the award he took was contrary to the contract concluded by both parties, therefore, that award should be quashed as it was ruled by the Commercial high court.

Damages requested by parties

[40] EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd states that in case it will be proven that ROYAL HASKONING DHV (Pty) Ltd filed unnecessary lawsuit for escaping the liabilities from the faults it committed, despite it the court ordered it to pay the damages, counsel and procedure fees; this must be changed at the supreme court level, then ROYAL HASKONING DHV (Pty) Ltd shall pay to EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd 3,000,000 Frw which includes moral damages, counsel and procedural fees.

[41] ROYAL HASKONING DHV (Pty) Ltd states that the rulings of Commercial High Court is lawful because it quashed the award which was bothered its interest since it was taken contrary the contract both parties concluded, thus, the amount which EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd was charged must be sustained and adding 3,000,000 Frw which includes 2,000,000 Frw of the counsel fees and 1,000,000 Frw of the procedure fees.

COURT'S DETERMINATION

[42] Article 258 of the civil code book III provides that “any act of man, which causes damage to another obliges the person by whose fault it happened to be held liable”

[43] Regarding this case, the court is finding the fact that EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd appealed against the judgment, led ROYAL HASKONING DHV

(Pty) Ltd to hire the advocates which made it to suffer loss, that loss must be paid by EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd because it lost the case, therefore, ROYAL HASKONING DHV (Pty) Ltd is awarded in the discretion of the court 1,000,000 Frw which includes procedure and counsel fees.

[44] Concerning damages requested by EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd, the Court find them without merit because it lost the case.

III. DECISION OF THE COURT

[45] Finds without merit the appeal of EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd;

[46] Quashes the arbitration award of Counsel Rubasha Herbert taken on 16/09/2016;

[47] Sustains the rulings of the judgment RCOM00005/2017/HCC/CHC rendered by the commercial high court;

[48] Orders EXPERTS CONSULTANTS UNITED, Inc Uganda to pay to ROYAL HASKONING DHV (Pty) Ltd 1,000,000Frw of the procedure and counsel fees;

[49] Orders that court fees deposited by EXPERTS CONSULTANTS UNITED INC, UGANDA Ltd are equal to the expenses of the case.